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## Contents

|                                                |     |
|------------------------------------------------|-----|
| The Week .....                                 | 189 |
| Editorials                                     |     |
| The Same Mr. Taft.....                         | 191 |
| The Washington Conference and Europe.....      | 194 |
| The Conference of Europe.....                  | 196 |
| The Civilizing of Warfare.....                 | 197 |
| General Articles                               |     |
| Progressive Cleveland.....Leslie Higginbotham  | 199 |
| Psychology and Mysticism.....A. Clutton-Brock  | 201 |
| To a Crucifix (Verse).....Anna Wickham         | 203 |
| On His Majesty's Service.....Florence Hackett  | 203 |
| Headline Heroes.....Robert Littell             | 204 |
| Back to Nora O'Grady.....Eleanor Gilbert       | 206 |
| Verse .....                                    | 208 |
| New Symptoms in France.....Franck L. Schoell   | 209 |
| The Mooney Case.....                           |     |
| James M. Beck, Felix Frankfurter, G. S. Arnold | 212 |
| Correspondence .....                           | 223 |
| The Color Organ and the Theatre....Stark Young | 225 |
| Reviews of Books                               |     |
| Gerhart Hauptmann's Idyll.....                 |     |
| .....J. Middleton Murry                        | 226 |
| Europe Since 1870.....Harry Elmer Barnes       | 228 |
| England in Spain.....S. Y.                     | 230 |

## The Week

THE Washington Conference is drawing to a close. It is slated to adjourn soon after this issue of the New Republic is distributed. The European delegates are extremely anxious to go home, and they have reason to be. Important deliberations and far-reaching decisions are being made in Europe which are in part the result of what has happened in Washington. Europeans have much more reason to be interested in the discussions and decisions at Cannes than in the poor remnant from the European point of view of the Washington agenda. Great Britain and Japan have obtained much that they wanted, and the longer they remain now the more concessions they may have to make to China and the United States. The French did not get what they wanted, but they never had a chance of getting it and they have nothing to gain by staying. What will happen to the proposed Nine Power Treaty about China is doubtful. For the majority of the conferees, China is only the dregs

of the cup and they would prefer not to drink to the dregs.

EUROPEAN statesmen have always adopted an indifferent attitude towards any attempt, initiated by America or by the Chinese, for the remedy of Chinese grievances. As long as their bankers had money to lend, they were interested in China as a field for economic exploitation, but whenever a proposal was made to do something for the Chinese, they would mutter a few words about Chinese sovereignty and the Open Door and then yawn, stretch themselves and go to lunch. In other words they always refused to deal with the Chinese question as if it deserved respectful consideration on its own merits. They always subordinated it to the interests of their policy in Europe. That is precisely what they have done in Washington. It was far more important for France and Great Britain not to ruffle Japan than it was for them to mitigate the grievances of China. The Root resolutions offered them the usual cheap opportunity of subscribing to the good old formulas and, on the strength of this credit in the bank, of congratulating themselves on their solicitude for the welfare of China. In this connection the statement given out by the British ambassador praising the work of the Conference was particularly disheartening. His apology for its behavior towards China was hypocritical enough to turn a sound stomach sour.

IT was by a very small majority that the Dail Eireann ratified the Treaty with Great Britain, setting up the Irish Free State, but all reports agree that public opinion in Sinn Fein Ireland is much more favorable to the treaty than the vote indicates. Owing, however, to the closeness of the vote and the bitterness of the opposition, the early career of the Irish Free State is likely to be troubled and stormy. The irreconcilables include many of the most loved and trusted leaders of the revolutionary movement. If they adopt a policy of discrediting and sabotaging the new government,

they may postpone for many years the extinction of the revolutionary spirit in Ireland and the stabilization in public opinion of the new state. But in spite of the bitterness of de Valera and his followers, there are convincing general reasons for anticipating either a decrease in their influence or a mitigation of their irreconcilability. They are all people who have suffered unforgettable personal injuries at the hands of the British government in defence of a cause which the British nation has finally admitted to be just. It is natural that they should find it hard to agree to the kind of partnership which the treaty establishes. On the other hand, if the partnership works well, as it should, time and custom will break down the obstinacy of their resistance. They will not sacrifice the social and economic development of the Irish Free State to a political scruple and a personal grievance which have outlived their original justification.

THERE are, of course, irreconcilables who regard the negotiation with Russia as a base act of international treachery. They assert that it will strengthen the hold of the Soviet government upon the Russian people. And that government was about to fall, they allege. We do not know whether recognition of the Soviet government will strengthen it or not. Its evolution toward conservatism must have estranged many of its extremist supporters, who were at first its chief strength. More of them will be alienated if it makes the further concessions to capitalism implied in the Supreme Council resolution. But one thing is quite clear. The present position of the Soviet government is not at all precarious, nor has it in fact been precarious at any time during the last three years. It was made to seem precarious to the western world by the continued repetition of rumors for which there was no foundation. And another thing is becoming clear. Among real conservatives, men who do not have to be consistent with opinions once hastily expressed in ignorance of the circumstances, there is a growing feeling that the Soviet government is on the whole the strongest and most moderate that could be constituted in Russia today. There are very few intelligent students of the Russian question who would look confidently to the violent overthrow of the Soviet government as a panacea for Russia's ills.

THE terms which are now offered to the Soviet Republic by the Supreme Council, as a condition to the admission of Russia to the family of nations, are none other than the terms liberals in America

and England have been urging for the last three years, with the possible exception of the demand for the validation of the Tsar's foreign debt. Three years ago most liberals would have regarded such a demand as perfectly fair. Since that time the French, the principal holders of Russian bonds, have committed so many hostile acts against Russia, and have inflicted such incalculable losses and hardships upon the Russian people, that their moral claim to compensation for property confiscated in Russia is very doubtful. It is on a par with German claims for property confiscated in France. But we think that the Soviet government would wisely waive its moral rights in this case. The burden of the foreign debt would not weigh very heavily if Russia could get on her feet economically. And she will not get on her feet so long as she is excluded from her natural place in the trade of the world.

THE financial writers for the daily press agree that there is something inherently unstable in a condition which sets the price of agricultural products back to the pre-war level, while maintaining industrial prices at fifty percent above that level. In a recent article in the New Republic, Professor David Friday pointed out the remarkable fidelity with which the gross value of agricultural products parallels the gross value of industrial products. When the former value shrinks, the latter value has to shrink in equal measure, whether through a decline in price per unit of products or through decrease in the number of units. In the last year equilibrium has been maintained largely through the decrease in units of industrial production, and the consequence has been widespread unemployment. That is a condition which can not last. Industry will have to produce more, and at lower prices. But how is it to be done? The favorite financial reply is, Liquidate wages. There is, however, an alternative, which does not involve the cutting of either wages or profits. That is the elimination of waste. If our industries were working up to 100 percent of practicable efficiency, instead of below fifty percent, as the Committee of the Federated Engineering Societies finds them doing, we could have cheaper industrial products at nobody's expense. And we suggest that before the movement for liquidating wages is permitted to throw our whole industrial world into a state of war, a sustained effort should be made to enlist organized labor in the cause of eliminating waste. The quick response to the Lockwood Committee demand that building labor should discontinue practices that obstruct production indicate that much might be accomplished by this method.

## The Same Mr. Taft

The press greets Mr. Taft's appointment with almost universal acclaim. . . . The New Republic does not begrudge Mr. Taft this outpour of good-will. But the Chief Justiceship . . . is not a subject for mere good-nature. . . . Cases involving the social control allowed the states under the fourteenth amendment . . . will soon again call forth a clash of differing conceptions of policy and of the proper scope of the Court's ultimate veto power. Mr. Taft, even before he was one of its members, has been rather obsessed by the notion that the Supreme Court is a sacred priesthood immune from profane criticism. He is not likely to be more hospitable to criticism as the presiding Justice of the Court. But the New Republic cannot emphasize too often that the only safeguard against the terrible powers vested in the Supreme Court lies in continuous, informed and responsible criticism of the work of the Court. Only thus will it be able to function as a living organ of the national will and not as an obstructive force of scholastic legislation.

The New Republic, July 27, 1921.

ARIZONA became a state in 1912. Its first legislature was confronted with the task of formulating a civil code properly adapted to the needs of the people of Arizona. One of the most insistent and delicate problems was the just and effective settlement of industrial controversies. In case of a conflict between employer and employees what "legal rights" may be asserted and how should those rights be enforced? How much should be left to the pressure of public opinion, to enlightened self-interest, to the competition of economic forces, and how much should be dealt with by law, and what machinery should the law utilize within the field of its authority? These were and are very complicated questions, as to which differences of opinion are acute because experience has as yet not brought decisive answers. This, if anything can be, affords peculiarly a field for the exercise of legislative discretion; if there can be any justification at all for having legislatures, a stronger case for determining the state's policy by the responsible judgment of its legislature can hardly be imagined. Nor was Arizona facing this problem in the abstract. Labor difficulties were not unknown in the past, and their recurrence was certainly a fact near the horizon of the law-makers of the state.

Charged with the duty of devising rules for the future conduct of labor litigation the Arizona legislature could hardly escape the necessity of some pronouncement upon the most contentious issue which presented itself in American labor law, to wit, the use of the injunction against picketing and the boycott, particularly where no violence

was used and the claim of destruction of property was merely colorable. The highest courts of the country, acting solely upon their own lawmaking function, were hopelessly divided. Thus Massachusetts, California, Michigan and New Jersey outlawed peaceful picketing while the courts of Ohio, Minnesota, Montana, New York, Oklahoma and New Hampshire sanctioned it. The conviction of an impressive body of opinion, which had accumulated at the time the Arizona Legislature was considering this problem, has thus been summarized by Mr. Justice Brandeis:

The equitable remedy, although applied in accordance with established practice, involved incidents which, it was asserted, endangered the personal liberty of wage-earners. The acts enjoined were frequently, perhaps usually, acts which were already crimes at common law or had been made so by statutes. The issues in litigation arising out of trade disputes related largely to questions of fact. But in equity issues of fact as of law were tried by a single judge, sitting without a jury. Charges of violating an injunction were often heard on affidavits merely, without the opportunity of confronting or cross-examining witnesses. Men found guilty of contempt were committed in the judge's discretion, without either a statutory limit upon the length of imprisonment, or the opportunity of effective review on appeal, or the right to release on bail pending possible revisory proceedings. The effect of the proceeding upon the individual was substantially the same as if he had been successfully prosecuted for a crime; but he was denied, in the course of the equity proceedings, those rights which by the Constitution are commonly secured to persons charged with a crime.

It was asserted that in these proceedings an alleged danger to property, always incidental and at times insignificant, was often laid hold of to enable the penalties of the criminal law to be enforced expeditiously without that protection to the liberty of the individual which the Bill of Rights was designed to afford; that through such proceedings a single judge often usurped the functions not only of the jury but of the police department; that in prescribing the conditions under which strikes were permissible and how they might be carried out, he usurped also the powers of the legislature; and that incidentally he abridged the constitutional rights of individuals to free speech, to a free press and to peaceful assembly.

It was urged that the real motive in seeking the injunction was not ordinarily to prevent property from being injured nor to protect the owner in its use, but to endow property with active, militant power which would make it dominant over men. In other words, that under the guise of protecting property rights, the employer was seeking sovereign power. And many disinterested men, solicitous only for the public welfare, believed that the law of property was not appropriate for dealing with the forces beneath social unrest; that in this vast struggle it was unwise to throw the power of the state on one side or the other according to principles deduced from that law; that the problem of the control and conduct of industry demanded a solution of its own; and that pending the ascertainment of new

principles to govern industry, it was wiser for the state not to interfere in industrial struggles by the issuance of an injunction.

With this as a background, the Arizona legislature yielded to the experience of England and several American states, by prohibiting interference, through extraordinary relief by injunction, between employer and employees in any case growing out of a dispute concerning terms of conditions of employment, unless injury through violence was at stake. In all other cases of industrial conflict it left the rights of the parties to be protected through the criminal law and ordinary suits for damages. This act was passed in 1913, has remained untouched since then, and has passed challenge in the Arizona courts.

But the Supreme Court of the United States now says otherwise. Eight years after the law has been in force the Supreme Court holds that Arizona has laid impious hands upon the Ark of Covenant as enshrined in the fourteenth amendment. To a mere layman this result must appear as incredible as the process by which it is reached is mysterious—although the decision immediately affects some thirty million lay men and women, who earn their livelihood in industry, and it no less affects the whole hundred million lay population of this country, insofar as it involves the power of the Supreme Court of the United States to translate its views of social policy into the law of each of the forty-eight states. Nor will the layman's bewilderment be lessened by the fact that this appalling result is reached by the votes of five men as against the votes of four men. The Chief Justice helps neither an understanding of the decision nor respect for the law in asserting that "It does not seem possible to escape the conclusion" that the Arizona act is unconstitutional when in fact four of his associates—Justices Holmes, Pitney, Brandeis and Clarke—find not the slightest difficulty in escaping that conclusion and in emphatically dissenting from it. Judged by its point of view and its significance for the future this decision of the Supreme Court is, in our judgment, fraught with more evil than any which it has rendered in a generation. It challenges the whole scope of judicial review under the fifth and fourteenth amendments. We know of no problem in the institutional life of this country which calls for a more courageous searching and fundamental scrutiny than the nature of the power which the majority of the Court exercises in the Arizona case and the manner in which that power is wielded.

Let us recall the words of the fourteenth amendment to see the exact terms of the limitations by

which the states are circumscribed in determining for themselves, in the language of Mr. Justice Pitney, "their respective conditions of law and order, and what kind of civilization they shall have as a result."

... nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Chief Justice Taft finds that the denial in labor cases of extraordinary relief by injunction deprives the owner of a business of "property" without "due process of law," and that in selecting the class of employers and employees for special treatment, though dealing with both sides alike, Arizona is guilty of a denial of "the equal protection of the laws." Whence does the Court derive this result? Surely not from the *words* of the fourteenth amendment. That amendment, to be sure, imposes limitations upon state action, but it does not define them. "Due process of law" and "the equal protection of the laws" are not self-defining. Their content is derived from without. "The Constitution was intended," says the Chief Justice, "to prevent experimentation with the fundamental rights of the individual." Of course. But what "rights" are "fundamental" is *the* question to be answered. For Chief Justice Taft the beginning of the problem is the end. "When fundamental rights are thus attempted to be taken away," he says in speaking of the Arizona statute, and thus blithely indulges in a schoolboy's begging of the question. The very problem at issue is whether the use of the injunction in labor cases is a "fundamental right." It does not bring us one whit nearer solution to be told repeatedly that the Constitution safeguards "fundamental rights." The central problem is evaded by an effortless repetition of phrases.

The content of the fourteenth amendment is to be derived, the Supreme Court has told us, by a judicial process of inclusion and exclusion. The Court has been at this process for fifty years. Sedulously avoiding definition, the Court has insisted that the fourteenth amendment does not alter the basic nature of our federal system. It still leaves each state free to choose its own mode of life, so long as the "immutable principles of justice which inhere in the very idea of free government" are respected. The fourteenth amendment embodies "broad and general maxims of liberty and justice, founded on the essential nature of law."

Moreover, the Court has recognized that "while the cardinal principles of justice are immutable, the methods by which justice is administered

are subject to constant fluctuations," and "the power of the people of the states to make and alter their laws at pleasure is the greatest security for liberty and justice." The fourteenth amendment, so the Supreme Court has told us again and again, is not the arbiter of policy. Only "immutable principles" are in its keeping.

Is it really possible for anyone living in the present day to insist that the restriction of the use of the injunction in labor cases is the denial of "a fundamental principle of liberty and justice, which inheres in the very idea of free government and is the inalienable right of a citizen of such a government?" No wonder Mr. Justice Pitney, dealing with the issue in the concrete, writes, "I cannot believe that the use of the injunction in such cases—however important—is so essential to the right of acquiring, possessing and enjoying property that its restriction or elimination amounts to a deprivation of liberty or property without due process of law, within the meaning of the fourteenth amendment."

Equally incredible and ominous is an application of the requirement of the equal protection of the laws which excludes differentiating treatment of such a distinct problem as a labor controversy, compared with other types of litigation. Again let members of the Court speak. "I think further," writes Mr. Justice Holmes, "that the selection of the class of employers and employees for special treatment, dealing with both sides alike, is beyond criticism on principles often asserted by this Court. And especially I think that without legalizing the conduct complained of, the extraordinary relief by injunction may be denied to the class. Legislation may begin where an evil begins. If, as many intelligent people believe, there is more danger that injunction will be abused in labor cases than elsewhere, I can feel no doubt of the power of the legislature to deny it in such cases."

How is one to account for such a decision by the majority, and for this opinion by Chief Justice Taft? We venture the following analysis:

1. Chief Justice Taft deals with abstractions and not with the work-a-day world, its men and its struggles. To him, also, words are things and not the symbols of things. The jejune logomachy of his judicial process is thus exposed by Mr. Justice Holmes:

The dangers of a delusive exactness in the application of the Fourteenth Amendment have been adverted to before now. . . . By calling a business 'property' you make it seem like land, and lead up to the conclusion that a statute cannot substantially cut down the advantages of ownership existing before the statute was passed. An established business no doubt may have pecuniary value

and commonly is protected by law against various unjustified injuries. But you cannot give it definiteness of contour by calling it a thing. It is a course of conduct and like other conduct is subject to substantial modification according to time and circumstances both in itself and in regard to what shall justify doing it a harm. I cannot understand the notion that it would be unconstitutional to authorize boycotts and the like in aid of the employees' or the employers' interest by statute when the same result has been reached constitutionally without statute by Courts with whom I agree.

For all the regard that the Chief Justice of the United States pays to the facts of industrial life, he might as well have written this opinion as Chief Justice of the Fiji Islands. Mr. Taft, as a member of the War Labor Board, came in contact with not a little that must have informed his mind as to the industrial struggle, and law's relation to it. But all those crude and sordid and unsymmetrical facts have no place in the mind of Chief Justice Taft. The New York Court of Appeals declared the first Workmen's Compensation Act unconstitutional by putting aside as irrelevant all the human facts as to the operation of the old law governing master and servant and restricting itself to "the purely legal phases of the controversy." So Chief Justice Taft writes in nubibus. From reading his opinion the historian of the future would have to assume that the Arizona legislature withdrew injunctive relief in labor cases out of sheer malevolence or in a spirit of reckless oppression.

2. "What we call necessary institutions," says de Tocqueville, "are often no more than institutions to which we have grown accustomed." The Chief Justice, we venture to suggest, is a victim of this process of self-delusion. For him there never was a time when injunctive relief was not the law of nature. For him the world never was without it, and therefore the foundations of the world are involved in its withdrawal. And yet, 1888 marks the first recorded opinion of an injunction in labor litigation, and in 1896, the Chief Justice of Massachusetts still speaks of injunctions in such cases as "a practice of very recent origin." By 1921, the right to an injunction has become "an immutable principle of liberty and justice," world without end! The result is that while the due process clause does not guarantee trial by jury as at common law even in criminal cases, the due process clause *does* guarantee the right to trial *without jury*—for the nub of the matter is that the resort to equity for an injunction in labor disputes is due to a "greater probability of a conviction for contempt by a judge alone . . . . than of conviction by a jury likely to sympathize in some degree with the offender."

3. As a result of both these tendencies—ab-

stract reasoning and canonizing the familiar into the eternal,—the judge's limitations are stereotyped into limitations of the Constitution. The danger has been voiced by one of the most discerning of recent judges, the late Mr. Justice Moody:

Under the guise of interpreting the Constitution, we must take care that we do not import into the discussion our own personal views of what would be wise, just and fitting rules of government to be adopted by a free people, and confound them with constitutional limitations.

This is precisely what Chief Justice Taft has done, and that too in the most sensitive field of social policy and legal control.

## The Washington Conference and Europe

THE Washington Conference has succeeded in some respects and has failed in others, but on the whole it has succeeded. It has succeeded in the only way that a Conference whose decisions depend upon unanimous consent can succeed. A conference is not a government. Inasmuch as it cannot enforce a decision of the majority on a reluctant minority, even if the minority numbers only one nation, its ability to bring about decisions is severely limited; but its success in reaching agreements is not the only measure of its value. It has an equally essential function to perform in ventilating the causes of disagreement when disagreement occurs. By throwing light on the reasons for disagreement it unlooses idea-forces which expose a nation or the group within a nation which has refused to agree to sharp scrutiny, to suspicion and to moral pressure. A conference, that is, is as much by way of being an organ of opinion as it is a government. The Washington Conference has not always acted, but its want of decisions have been at times more instructive than its decisions.

We do not wish to underemphasize the value of its positive achievements. That value is, we believe, considerable. It has taken a long and perhaps even a decisive step in the direction of general appeasement. It has for the time being destroyed sea power, with the exception of the submarine, as an instrument of offensive warfare, as a medium for competition in armaments and as a subject matter for recriminations among bellicose patriots. If the maritime nations can preserve and extend this measure of pacification on the water, it is bound to work in favor of a corresponding limitation of land armaments and of some general guarantee of the security of land frontiers.

Sea power has, we hope, entered as a result of

the Washington Conference on a new phase of its development and a new conception of its functions. It has always tended to be less aggressive and more amenable than military power. It has interfered decisively on several occasions, notably in the cases of the French of Louis XIV and of Napoleon I and Imperial Germany, to prevent any military nation from dominating the continent of Europe. But its own behavior has not made for a method in politics which would work without war. Great Britain, for instance, has used its control of sea power to build up not only a commonwealth of self-governing nations all over the world, but also an empire which was imposed by force on many subject peoples. It negotiated an alliance with a military power like Japan and consented to Japanese expansion on the continent of Asia. The colonial empire which was the fruit of its maritime supremacy was so profitable that it stimulated the covetousness of Germany and provoked German imperialists to undertake a competition in naval armaments partly for the purpose of obtaining a share in the spoils. Then, alarmed by the German menace, the Mistress of the Seas connived at Russian and French as well as Japanese imperialism for the purpose of securing her own position against Germany. Sea power, that is, since it came into the hands of the British Empire, was not as aggressive to its European neighbors as land power was, but it exercised by virtue of its control of the sea certain economic and political rights over backward peoples, which rested on force and could be overthrown by force. The existence of these privileges made for war. They prevented sea power from becoming a positive influence in favor of international adjustment and peace.

The Washington Conference has radically changed the nature of the dominant sea power and the conditions under which it will operate. Maritime supremacy, so far as the larger part of the waters of the world is concerned, is now shared equally between two nations. We say between two nations for an obvious reason. Under the naval agreement the combination of Great Britain and the United States, controlling as it would, ten out of sixteen and a half units of sea power, is irresistible and it is the only combination which is irresistible. If they do not act in combination, neither is strong enough to act aggressively by itself. A disagreement means a deadlock. Great Britain could not break the deadlock by combining with Japan, because a preponderance of eight to five would not be sufficient to close the seas to the American ships. Neither would a combination of United States and Japan against Great Britain,

unless perhaps France and Italy each built their 175,000 tons and joined the combination. Sea power is in effect divided among the English speaking peoples under conditions which render a separate international policy abortive and which render a joint future policy extremely desirable and fruitful. This partition of sea power and the probable future partnership in exercising it is the most revolutionary result of the Conference. The Conference has not actually brought into existence an Anglo-American Entente. But during its deliberations the British and American governments have successfully pursued a joint policy and they have bound themselves by a naval agreement which will give use to inducements for the continued practice of a joint policy so powerful that they are likely to prevail.

How far the British and American people can congratulate themselves on this result will depend largely upon what the joint policy is, but the understanding and cooperation which the two governments have already attained removes a widely prevalent apprehension and is in itself a great gain. A year ago journals like the *Nation* were marshaling a formidable array of considerations which tended to prove the existence of an ominous and apparently irresistible drift towards divergence of interest and war between Great Britain and the United States. The drift was neither as ominous nor as irresistible as it was represented, but in the course of time the two countries might have fallen into a competition for maritime supremacy which would have resulted disastrously for both. The naval agreement promises to exorcise this danger; instead there will be at least for the next few years a tendency to act together in international affairs. Of course they cannot travel very far along the road of a joint policy unless both of them get rid as thoroughly as conditions permit of the aggressive imperialist ingredients in their existing relations with other peoples; but Great Britain at least is moving in the direction of charging off liabilities which will embarrass her future cooperation with the United States. She has already gone far towards the liquidation of the Irish account and she is now starting to do as much for her relations with the continent of Europe.

Such we hope is the meaning and object of the coming conference at Genoa. The summoning of this essentially European gathering and the invitations extended to Germany and Russia are the direct result of the lessons which European statesmen have learned in Washington. Until recently these gentlemen, confronted as they were with political and economic problems which seemed almost impossible of solution without American assistance,

looked covetously towards the reserves of economic and political power in this country. They had come to depend on American help during the war and they could not brace themselves to get along without it. Yet if they had obtained it unconditionally, the result would have been merely to dissipate American resources in Europe. The Washington Conference has taught Europe the need of depending on itself. Frenchmen and Englishmen have learned and have agreed that Europe must write off some of her political and economic liabilities before they can receive or can reasonably ask for American assistance. Their excursion to Washington cleared up for them the American attitude and the responsibility which that attitude imposed on them if Europe was to be saved. It suggested to them the only possibly effective method of redeeming that responsibility—the method of submitting the European problem to an essentially regional European assembly which included all the European peoples and whose decisions would rest on the consent and might result in the measurable future cooperation of the whole of Europe.

The success of the Washington Conference in elucidating for European statesmen the realities of the existing relationship between America and Europe provides a beautiful illustration of one essential value of these gatherings even when they fail to agree. They change people's minds, and the change is for the better just in so far as those whose minds are changed are willing to face realities. The conferees at Washington were powerless to take any positive action about land disarmament because it was a European problem, but its impotence to deal with the impasse revealed by M. Briand's speech was itself instructive enough to be salutary. The alert public opinion of the world was already convinced of the necessity of a large measure of disarmament in order to avoid general bankruptcy. M. Briand answered this powerful general demand by insisting that in the eyes of France her army meant security, and that France could not disarm without guarantees. The answer was effective, but it did not apply to France alone. Why should any nation surrounded by possible enemies who were armed, disarm without guarantees? Guarantees to be effective must be general. Such was the ultimate lesson of the miscarriage of land disarmament of Washington. And it was quickly learned. One of the declared objects of the Conference at Genoa is to weave a net work of general guarantees which may emasculate the political obstacle to land disarmament.

The success of the Washington Conference in

partitioning sea power, in providing the United States and Great Britain with powerful motives for future cooperation and in stimulating European statesmen to tackle the solution of the essentially European problem of security against military attack bear a close and an interesting relation one to another. British political leaders are beginning to understand the terms on which the American people may cooperate with Great Britain and through Great Britain with Europe. They will not cooperate in order to preserve the military preponderance on the continent of Europe of any one group of powers, such as the victors in the late war, but their reasons for not cooperating might well be overcome if the European nations formed a concert, the members of which had abandoned aggressive political ambitions and armaments. It is such a concert which Lloyd George is planning to bring into existence; and the plan is indicative of a change in the traditional continental policy of Great Britain for which the new partnership in sea power brought about in Washington is at least partially responsible.

When Great Britain alone was Mistress of the Seas, she used her maritime supremacy to preserve a balance of power on the continent of Europe; but the balance was always unstable and the maintenance of its stability demanded the grim expedient of periodic wars. The Great War was from the point of view of British statesmanship an effort to preserve the European balance from destruction at the hands of Germany. But the result was its destruction at the hands of the victorious Allies.

Recently the British government has separated itself from France and has sought to build up a new balance; but the old policy does not meet the present needs of Europe. If the attempt is pushed home, it would involve a new war with France and Poland on one side and Germany and Great Britain on the other. Humane statesmanship can not contemplate in cold blood the catastrophe of another war to end war. The alternative is to abandon the idea of a balance of power and substitute that of a European concert, resting on a general guarantee. The United States will not participate in the obligations of the guarantee, but would be willing to form much more intimate political ties with European nations which formed part of such a concert than it could with nations which were struggling to maintain a preponderance or a balance of power. The American attitude is important, not only because of our economic resources but because the United States divides control of the Atlantic with Great Britain and it will remain alienated from any so-

ciety of European nations which systematically depend on war for the regulation of their relations. The only way for Europe to obtain the American assistance she covets and needs is to pay for it by cutting out the malignant growth of aggressive military ambitions in her political system. This some European statesmen are now trying to do, and the attempt is the direct and the most precious result of the Washington Conference.

## The Conference of Europe

FOR the first time since the war, all the nations of Europe, victors and vanquished and neutrals, are to meet to deliberate on the common welfare. In issuing the call for the conference at Genoa the Supreme Council recognizes officially that there is such a thing as the common interest of European civilization. It abandons the theory so persistently maintained ever since the armistice, that Europe is the private domain of the victorious Allies, to be ruined or saved according to their discretion. The vanquished are to be asked to join in the initiative, and even Russia, the pariah of the nations, down to the present treated as in a rank far below Germany, even, is accorded a qualified invitation to associate herself in the common enterprise. It is easy to place undue emphasis upon the qualifications. There are doubtless other qualifications, under cover; Germany, Hungary and Austria have no doubt been given to understand that various matters vital to them will be excluded from the discussion. Let us not delude ourselves into expecting that all the cards will be laid on the table at Genoa, or that anything more than preliminary and tentative settlements will be attained. Genoa, like Washington, will be a milestone, not a goal.

Exactly what can such a conference be expected to accomplish? Its avowed object is to start Europe on the way to economic recovery. And the principal obstacle to economic recovery is the German indemnity. If the indemnity could be cut back to a figure corresponding with Germany's ability to pay—not her present ability which is next to nothing, but her ability when she has come back to a condition of prosperity—European trade and industry would immediately swing upward. It would then become safe for English and American capital to extend credit to Germany for the purchase of raw materials and goods, as well as for meeting the indemnity payments, which France and Belgium need immediately for the balancing of their budgets. The payments, it is true, would be smaller than the victors had hoped, but they

would be larger than anything they are getting, or will get, so long as they cling to delusive hopes. There would be a chance of currency stability, not only in Germany but in France and Belgium too, once the item of unpayable indemnity charges was excluded from the calculations of the budget makers.

But we have not the least hope that any such salutary result is to be anticipated from the meeting of the nations at Genoa. Nor, by the way, do those shrewd observers of international affairs, the speculators in national bonds, appear to anticipate anything of the kind. If they did there would be a marked boom in foreign securities. No: the smiling acceptance of the project by M. Briand would in itself be sufficient proof that the indemnity question is not to be handled with drastic common sense. M. Briand and every economically informed Frenchman knows well enough that there can be no final solution until the indemnity question is disposed of. But French public opinion is far from prepared for the cancellation of false hopes. That must come later, probably much later.

Since that is the case, what results of material value can the conference achieve? It can handle, with a fairly free hand, such a problem as the Ter Meulen scheme of financing industry. It can apply pressure to the newer states of Central Europe to remove some of the absurd regulations upon intercourse between states. Possibly it could even consider the revision of the plan by which Germany is handicapped in her trade by a twenty-five percent export duty for the benefit of the indemnity. Some pressure might be applied to check reckless financing and excessive military expenditures. Progress might even be made toward the stabilization of currencies, although this is not very probable, so long as the main obstacle to economic and fiscal recovery, the inflated indemnity, remains untouched.

If nothing more can be accomplished, impatient reformers will ask, what is the good of a conference at all? We wish to remind our readers that any conference in which conflicting national wills are brought together offers a field in which the evolution of events gains heightened intensity. The European settlement under the Treaty of Versailles was not one that could last. It was an intolerable incubus upon European welfare. But there are vested interests in its maintenance that will be surrendered only under necessity. France will not voluntarily give up her occupation of the Rhineland, nor her right under the Treaty of keeping Germany economically prostrate, until the accumulating force of new European international combinations compels her to do so.

Now there is a natural economic alliance between British trade, German industry and Russian undeveloped resources. French policy defeats the alliance of its fruits. This condition, already dimly apparent, will stand out with increased clarity after the Genoa conference. Just as the Washington Conference brought into clear view the dangers of French military isolation, so the Genoa conference is likely to bring into clearer view the dangers of French economic isolation. And this clarification is essential to any substantial improvement in European conditions.

In a conference in which European affairs are working themselves out to a new adjustment, can the United States perform any function other than that of sympathetic observation? We can not see how that is possible. There will come a time when the European nations have cleared away the obstacles to recovery that represent nothing but a hang-over of war hatred. They will then be in a condition to discuss seriously a problem in which we are vitally interested, the problem of adjusting the debts between nations. In such a discussion we shall not only have demands to make, but concessions to offer. When we find not only that England is ready to abate her claims upon France and Italy, but France is also ready to abate her claims upon Russia, and in so far as the common good requires it, upon Germany, we shall probably seek the reputation of moderate creditors ourselves. But we shall accomplish nothing by going into a conference in which the European nations can not be expected to do anything but work toward a very partial liquidation of their own conflicts of interest.

## The Civilizing of Warfare

THE conventions which the Washington Conference has accepted with respect to submarines and poison gas possess in our opinion only a doubtful reality. They are prompted by the amiable intention of civilizing warfare; but ultimately there is only one way of civilizing warfare which is to get rid of it. If war is justified, surely poison gas is justified. We can understand that a group of nations which believed in the necessity of war might agree to forbid practices which inflicted extreme suffering on combatants without producing any corresponding military advantage, but such is not the case with poison gas. It is a most efficient weapon which in the next war might bring victory to the nation which used it and defeat to the nation which did not.

Whether it is or is not used in the next war will

depend entirely on a calculation of advantages. If the war is localized and confined to two belligerents, they both might abjure gas because they might calculate that by using it they would lose more in the sympathy and support of neutral nations than they would gain in military advantage. But if the next war is not localized (and should it include one or two European nations it is certain to become general) the self-denying ordinance which the nations have just adopted in Washington will soon go by the board. Retaliation is the golden rule of war. One or more of the belligerents will find a sufficient excuse for falling back on poison gas as a means of chastising its enemy for some notorious illegality or atrocity.

Submarine prohibition raises a group of considerations different from those involved in the prohibition of poison gas. The building of submarines is slow and difficult and their operation requires much experience and technical skill. It would, consequently, be possible to abolish them with some assurance that the time and skill required to build and operate them could not be improvised during a war. But if they are not abolished, and if international law continues to recognize the validity of a blockade established by one belligerent for its own national advantage, we cannot see any reality or any justice in placing legal limits on the activity of submarines. Is it any more barbarous to torpedo a vessel which is carrying food of possible military value to an enemy than it is to starve the civilian population of an enemy into submission? In both cases you are risking the lives of non-combatants for the purpose of beating your enemy. In one case you threaten non-combatants who are actually carrying goods of possible military value with drowning. In the other case you threaten women and children and old and feeble men who are frequently a military burden with starvation. As long as there is no guarantee that the blockade may not be used to enable naval power to win a war fought for aggressive purposes, the prohibition of the commerce destroying activity of the submarine is merely the writing of international law for the benefit of the owners of capital ships.

As a matter of fact the agreement reached at Washington to protect merchant ships from being torpedoed without notice by a submarine suffers at this writing from an ambiguity similar to that of the Prohibition Amendment. The Constitution prohibits the manufacture and sale of intoxicating beverages, but what is an intoxicating beverage? Congress has defined it, but the definition is arbitrary and is susceptible to change. The signatories to the agreement abandon the torpedoing

of merchant ships, but in the nature of the case merchant ship is impossible of definition. Everyone would admit that an unarmed ship which was carrying shells or guns manufactured abroad to a belligerent is just as much a part of a belligerent war service as a motor truck with a similar load would be. A belligerent would have as much right to destroy the ship as he would the truck. But once this principle is admitted where can you draw the line? During the war Great Britain and the United States prevented, so far as they could, Germany from obtaining any benefit from trade with neutrals. All shipments into Germany were contraband. But if all enemy trade is contraband, how can the ships which carry the trade be labelled innocent? How can the sailors who operate them ask for the privileges and immunities of non-combatants?

The submarine when used as a commerce destroyer is, as the British delegation has claimed in Washington, a weapon of aggression; but it is aggressive in the same sense and only in the same sense that the blockade is aggressive. It is susceptible of being used by an aggressive military nation as a dangerous and efficient weapon of attack. For that reason the New Republic would like to see it abolished just as we would like to see the capital ship abolished. The fewer weapons there are of this kind in existence, the less likely nations will be to yield to bellicose feelings or aggressive ambitions. But the world will not get rid of aggressive weapons by forbidding nations to use them in the most militarily efficient manner. In the last analysis aggression is a matter of policy rather than of armament. What the nations need is a general self-denying ordinance against aggressive political policies, not against aggressive military and naval weapons.

## *The New* **REPUBLIC** *A Journal of Opinion*

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# Progressive Cleveland

**W**HEN the electors of Cleveland, Ohio, on November 8th, approved an amendment virtually rewriting the present city charter to provide for the introduction of Proportional Representation voting and the city manager form of government the city was by far the largest on this continent to have adopted either of these systems of handling municipal affairs. By a vote of 77,888 to 58,204 the people of the fifth city in size in the United States decisively expressed their dissatisfaction with the Republican and Democratic parties and the manner in which they have conducted Cleveland's affairs. Hoping, apparently, for nothing better from them, they have turned with optimistic eyes to two plans, which working together, they believe will give the two parties meager power, if any, and will reduce political bossism to a minimum. Through the use of the Proportional Representation ballot the alignment of the voters in groups other than partisan is bound to occur, while through a chief executive removed from the control of partisan politics the electors look forward to seeing the finances of the city, the old man of the sea upon Cleveland's back, put upon a modern, business-like basis and the city's affairs conducted without the inefficiency of the spoils system.

Because it is the first of the major cities of the continent to try these so-called scientific systems of government, generally regarded as inapplicable to municipalities as large as Cleveland, the city will become the laboratory for testing these progressive methods as to suitability for the other large municipalities of the country. Already the cities throughout the nation are looking toward the city on Lake Erie with hope for something better in the administration of the people's will in the large urban community. Inquiries as to the new methods, how they were adopted, how they work, and what may be expected of them, have come from municipalities both larger and smaller than Cleveland. Even in New York a group has found hope in the example, and has asked a leader of the Cleveland campaign to tell it whether or not the plan might furnish reason for optimism toward progressive government in the metropolis. And from the autumn of 1923, when the first election by Proportional Representation of a council which will choose the first city manager for Cleveland will be held, through to the end of the two years which will close the first chapter of the undertaking, people everywhere who have a desire for the better handling of civic affairs will give the experiment in Cleveland their attention.

The change in Cleveland represents one of the most direct attempts to set up democracy and efficiency in city affairs ever known. It is doubtful if a more compromising program would have appealed to the Cleveland voters, weary as they are of the situation at the city hall. In the amendment of 25,000 words is provided a thorough-going and radical change from the present charter. Not only is every safeguard for the success of the new plan of election and management written into the charter, but every means of making possible better government in any way is inserted. A preferential system of voting similar to Proportional Representation and generally regarded as a successful system, the "Mary Ann Ballot," goes into the discard when the new amendment becomes effective. The time-honored ward divisions of the city with their opportunities for gerrymandering also find their way to the political dump heap, a smaller number of councilmen being elected at large from four natural districts. The mayor, as chief executive of the city, is replaced by the manager, and the man who bears the title of mayor becomes merely the president of the council and representative of the city in matters of courtesy. A direct check is made upon control of the city hall through appointment of party favorites to positions there. No officer or employee of the administrative branch of the city may pay an assessment for political purposes, be assessed, circulate an assessment paper, be an officer in a political organization, be a candidate for an elective office or take part in a political campaign. The changed charter declares that any person violating these provisions is guilty of a misdemeanor, and, on conviction thereof in municipal court, shall be punished by a fine of not less than fifty dollars, imprisonment for a term not to exceed six months, or both. He, of course, loses his job also. No member of the council will be permitted to become a candidate for nomination or election to any office other than his own or to accept any office in the service of the city.

The most salient feature of the new charter is the innovation of the city manager appointed by the council as representative. He cannot be a member of the council and is removable by it at any time. The manager is to make all appointments in the city executive department, and the council is forbidden to interfere in these selections. The basis for this reformed municipal government is in the Hare system of Proportional Representation of which the working may be described thus: In

marking the Proportional Representation ballot, instead of putting a cross after the names of the men he wishes to support in columns labelled as his various choices, as under the Mary Ann Ballot, the elector puts numbers opposite the names, in the order in which he wishes to see them elected. After the votes are counted to find out what number is necessary for election, all candidates having this number or over of first choice votes are declared elected. Any ballots in excess of the number necessary to elect are distributed to the other candidates on the second choice basis. If no one is elected by first choice then the candidate having the smallest number of votes is declared defeated and his votes distributed according to second choice. If any man has then the number required he is declared elected. The same process is repeated until all the votes are disposed of and the requisite number of councilmen have been chosen.

Probably Cleveland's greatest problem for the last few administrations has been its finances. Under party control the city has been running heavily into debt for some time. Efforts made to curtail this liability seemed to bear no fruit. Taxes were increased, but little progress was made in keeping the debt from growing, and none at all in retiring liabilities inherited from the past. The auditor of the county in which Cleveland is situated has declared that the city is the most expensively administered large municipality in the United States. Probably this situation was the greatest factor in securing the adoption of the amendment. The people undoubtedly saw hope for a remedy of this financial situation in a trained administrator, running city affairs on a business basis. According to the amendment the director of finance, one of the department heads made obligatory by the changed charter, must prepare and submit to the council a monthly statement of revenues and expenses in all departments. With this knowledge of the financial affairs of the community government before them every month, the councilmen will be able to adjust its expenditures so that there will not be a deficit, but rather a surplus, at the end of the year.

That impatience with partisan control in city government was the chief factor in the success of the amendment at the polls is clear. At the same time one of the four independent candidates for mayor won handily from the representatives of the two political organizations. The campaign put on by advocates of the amendment hardly could be called aggressive. During a period of over six months, however, it did succeed in covering nearly the entire city. Early last spring the favorable report of a committee of business and professional men

appointed in 1917 to make a survey on the manager plan and the Proportional Representation ballot for Cleveland was taken up by advocates of a change. A body of civic organizations was formed to back the campaign, and the fight began. Under the leadership of A. R. Hatton, professor of political science in Western Reserve University, the amendment to put the plan into effect was drawn up.

The campaign committee did not have a strong political personnel, being made up mainly of leaders in organizations in the city not usually active in politics. Heading it was Peter Witt, former Cleveland street railway commissioner and one-time Democratic candidate for mayor. He was defeated for the chief executiveship under the Mary Ann Ballot, by the counting of second choice votes, although he polled more first choice votes than any other candidate. Warren S. Stone, grand chief of the Brotherhood of Locomotive Engineers, was vice-chairman of the committee. Professor Hatton was its moving spirit. Walter Millard, field secretary of the Proportional Representation League, was in the city as speaker and assistant during portions of the contest. The campaign was limited mostly to speaking before chosen bodies of social and civic organizations, at churches, schools and clubs. There was practically no organized opposition campaign, a prominent lawyer being the only one to get actively into the fight. With him proponents of the change put on debates throughout the city. There was comparatively little publicity on the amendments in the newspapers, as the mayoralty campaign held the limelight. Two of the three papers opposed the amendment. It was understood that the political parties did not fight the amendment because they thought such action would advertise it, and thus enhance its opportunities of passing, as well as, perhaps, bringing before the voters too vividly the situation at the city hall. The mayoralty campaign however was of such character as to do practically this. Mud-slinging and personal attacks were rife, and charges and counter charges of political dominance and inefficiency flew thick. One candidate was thrown bodily from the office of another, following which he swore out warrants for the arrest of his opponent and his opponent's campaign leader.

It might be expected that a campaign for such a change would naturally enlist the so-called upper class as its chief asset, but such was not the fact. From the laboring people and the small home-owners came the greatest support. Although the Cleveland Federation of Labor did not favor the amendment, backers of the change assert that labor in

the city was almost solidly behind the new plan. Doubtless the common people had more belief in a campaign which did not give evidence of much money. The changes were put before the people for only \$9,000, which included the cost of printing the petitions containing the entire 25,000 word amendment. Over three-fourths of the population of Cleveland is either foreign-born or of foreign parentage. The victory of the amendment in such a city is a direct refutation of the belief that the foreign classes are not so progressive as Americans and are easily controlled by politicians.

Professor Hatton, whose work is largely responsible for the triumph, is charter constructor for the National Municipal League and political advisor to cities. The former city charter was drafted by him, while the amendment which discards his old work also came from his pen. He wrote the charters of New Haven, Conn., Memphis, Tenn., and Atlanta, Georgia. Since 1913, when he wrote the Mary Ann Ballot into the city charter, declaring as he did so that Proportional Representation should be adopted instead, he has been agitating for the new system. He supplied a great part of the enthusiasm which carried the amendment to victory, and was the principal speaker in its behalf during the campaign. He was the actual manager of the fight, matching his wits successfully with the practical politicians of the Democratic and Republican forces, in their attempt to defeat the change. The victory under Hatton's

leadership is most eloquent evidence that the students of politics in American colleges, so often referred to as "mere theorists," can produce actual results in conflict with practical politicians and strong political organizations.

Despite the disappointment of proponents of the change at being unable to put the amendment before the people at a special election so that if carried it could go into effect at the regular election last November, it probably bodes well for the plan that it will not go into effect for two years. For during that time those who backed the plan will put on a great educational campaign, carrying explanations of Proportional Representation particularly and the city manager system into schools and homes throughout the city. When the first election under the amendment comes in November, 1923, the electors of Cleveland should understand thoroughly the intricacies of casting the Proportional Representation ballot. With this knowledge they will be in a position to give the new forms of government their best chance to make good through casting intelligent votes.

Surely, with almost every opportunity for success at its command, Cleveland will give Proportional Representation and the city manager form of government as applicable to a large city, a thorough test. If they fail under these conditions their advocates can claim little for them in the major cities of the country.

LESLIE HIGGINBOTHAM.

## Psychology and Mysticism

THE new psychology advances so quickly because it is concerned with a practical problem, namely to cure mental disorder; and, as it advances, it agrees more and more with an old mysticism which also had a practical problem though it was expressed in different language. If now we can state that problem in terms both mystical and psychological, we may be able to free mysticism and psychology from their perversities and excesses: mysticism from its tendency to affirm more than it knows, psychology from its tendency to see the normal in terms of the abnormal.

Mysticism has always told us, though in other words, what psychology is now telling us, namely that we have to find, and to be, our real selves; that there is unreality in our ordinary behavior; that what we commonly do, feel, and think, is not what we really mean, but that our real meaning

can be discovered and that the real self in us will recognize it when it is discovered. The mystic may call this discovery by many different names; but always he believes that, hidden by the unreal commonplace self there is this real self, personal but not merely individual, utterly *mine* and *me* but also universal, which is the great but often unrecognized ally of all our true and permanent desires. Our problem is to be aware of this ally, to get its help, to become it; and then we shall stare, amused and astounded, at the unreality of the old commonplace self, its silliness, its automatism, its lack of life.

"What is now proved," says Blake, "was once only imagined"; and the new psychology begins to prove the imaginings of the mystic: namely that our conscious selves, as we call them, lack the unity of real selves; that behind them is another self, the aim of which is to realize itself in con-

sciousness, in our actual words and thoughts and actions; so that we may attain to a living unity—no longer jerking out of one automatism into another, no longer saying what we do not mean, doing what we do not will, thinking what we dare not do.

More and more clearly it makes us aware, often frightening us in the process, that a great part of our behavior is nonsense and that, if we can find the cause of that nonsense, we shall instantly recognize it to be nonsense. We have the habit of rationalizing it, finding reasons for it where there are only causes. But this rationalizing is only parasitic upon the reason of the real self as dreams are parasitic upon our waking experience. If we can discover the causes of our nonsense, we shall see that the reasons with which we justify it are nonsense also. But we need, to start with, what the theologians call conviction of sin, namely to confess that we are living in a state of nonsense. If we take our ordinary selves seriously, we can never be cured of them; when a madman is mad enough to believe that he is not mad at all, nothing whatever can be done for him.

The new psychology at present is limited to the cure of mental disorders in individuals, and of mental disorders so painful to those individuals that they wish to be cured of them. It needs to be enlarged by mysticism so that it may also concern itself with the mental disorders which are not painful or individual and of which those who suffer from them are not aware. I mean the mental disorders to which we are subject in our collective action and particularly in our relations, as one people, with another people. For we are never so nonsensical, so automatic, so unreal, as in these relations; nothing is so difficult as to convince a man that he is a fool when he thinks that he is a patriot. Delusions, persecution manias, megalomaniacs, which in an individual would be evidently lunatic are the normal behavior of individuals otherwise sane when they see themselves as members of a nation; and psychology has not yet discovered any means of convincing them of their lunacy, of showing them that there are causes, not reasons, for their behavior.

Unfortunately, these collective lunacies are not painful to us, except in their results. For in what is commonly called patriotism we attain to a kind of sham universal self, which we value as if it were the real universal, and which gives us some of the delight and conviction of that real universal. But there is all the difference in the world between them. The real universal is universal; the sham enthalls us through its very exclusive-

ness. The real is living; the sham is more automatic even than the individual unreal self. In the real, personality is not lost but heightened; in the sham it is broken down into a generic type of fool. Finally, the real is superconscious, attained by effort and discipline, and finally giving to reason the spontaneity of instinct; while the sham is subconscious, destroying the reason and subjecting the whole mind to a mechanism which it rationalizes.

Now it is an article of faith with the mystics that there is in all men a desire, however much suppressed and unrecognized, to attain to the real and universal self; that there is always an appeal from Philip drunk to Philip sober, if only it can be made. It is the task of psychology to make that appeal, and now is the moment to make it. For we are aware of the danger of this sham universal self. We are still suffering from the war which was provoked by its insanity; and we all know that our society will not be able to endure another war like it. Further, if the mystics are right, there is in each one of us a potential rebellion against the tyranny of all automatisms. We have only to be shown that they are automatisms and that rebellion will become actual. At present we listen to the arguments against war and approve them in theory; but we have no protection against the automatisms that produce war, because we are not aware of them when they master us. It seems to us that we still hate war as much as ever, but that it is being forced upon us by the wickedness of another nation. That belief is the form which patriotic automatism takes; no arguments will protect us against it because, when we are possessed by it, we shall argue automatically that the war is forced upon us, as indeed it is—though by our unreal selves, not by the enemy. And the enemy, of course, is subject to the same automatisms and disguises them with the same arguments. The enemy also is against war but this war is forced upon it; it utters the same formulae and is equally unaware of their unreality. But in all the individuals composing the hostile nation there is the same potential rebellion against the unreal self; and if that rebellion could be made conscious, we should all become allies in it.

We are very far from that now. Already, because the United States and the British Empire are the chief powers in the world, they are beginning to behave automatically to each other. More in sorrow than in anger, we see that we have been mistaken in each other; but the anger will soon follow unless we can become aware of what is happening to us. We both have our national faults

and the automatic process begins by seeing the faults as the nation itself, and by supposing that the nation is one huge secret society plotting the downfall of its rival. Then the respective governments do actually begin to plot so that they may frustrate each other's knavish tricks—it is all in our national anthem. They fall victims to a collective auto-suggestion and become what they are thought to be. Then war "becomes inevitable" and breaks out automatically like the sudden onslaught of a homicidal maniac.

I put it all crudely and unscientifically because we have not yet a science of this collective lunacy. We are busy curing individual madmen but do not even know it when we go mad all together. My hope, however, is that we may apply what we learn in curing individuals to men in masses; and that a new science may use the old appeal of the mystic with a new force. There are formulae which one nation always falls into about a rival nation; these can be shown to be not thought but automatism of the mind; they can be collected and classified; and gradually the causes of them can be discovered and made known. Further, there can be a precise and scientific preaching of the doctrine that we have to find and to be our real selves; and that these real selves are a universal self, including, and heightening by that inclusion each individual personality; in fact that we can only be saved all together, which was once mysticism but is slowly becoming science. The alternative to this real universal self and universal starvation is the sham universal self of the pack or herd and damnation, or at least a relapse into the dark ages and a fresh start hundreds of years hence, when, it may be, the lesson of psychology and mysticism will at last be learned.

A. CLUTTON-BROCK.

### To a Crucifix

O courteous Christ—Kind guest, most gracious host,  
Which of these ugly things had pained you most  
That silly priests repeat your words for gain  
Or in your house hang symbols of your pain?

How had you withered at the servile breath  
Spent in the praises of your common death,  
Scorning these claims to honor and to pride  
For such a death as multitudes have died.

Not in the cross was such indignity  
As these acclaiming Christian ages see,  
When you who lived for cure and for relief,  
Are most remembered for your wounds and grief.

ANNA WICKHAM.

### On His Majesty's Service

TWO miles to his home. He lived in the country now. He had told the patrol they need not call for him, he would make his way home all right. It had been daylight then, it was dark now, dark, so dark, a muggy night, soft and clammy, a mid-October night.

He turned along the road leading to where he lived. His feet leaving the pavement left slush beneath them, and fallen leaves. Summer was dead. Summer had gone from the land for some time past. It had gone from this man's heart forever.

He put his hand in his great-coat pocket. Yes, it was there. His hand closed over it. It gave him an eerie feeling to be walking the dark road tonight his hand clutching a revolver. His left hand went into his other pocket. Yes, it was there too, the envelope felt so smooth, he had dreamt of getting it and now he had it. He would like to read it again, but why? He had read it so often today—so often. There was no mistake, he fingered it. He had been expecting it for a long time and now here it was at last. A warning, threatening letter. What a damn fool he was to come walking this way alone. Even now men might be lying in wait, ready, even aiming at him. God, what was that? He paused, he listened. . . . It must have been a branch falling. He'd sleep in barracks after this. He wouldn't come again after tonight. No man could stand it, walking in the dark.

He started thinking. Faces rose before him, the faces of the men he had seen shot, women's faces when their boys were torn from home, the faces of little children, white and drawn with fear, the faces of the dead, some so peaceful, some so pained. He must banish them. Yes, death was the thing he dreaded most. He thought of other things; his home, his boyhood in that little white-washed cottage by the sea, his parents old, respected fisherfolk, no longer alive. They had been laid to rest long since. Once again he saw himself a barefooted happy boy, running over the purple heather hills. He was always the first down the cliff path, usually the first into the sea on a summer's morning, then out in the boat with the men, helping to lift the lobster pots, or dragging in the boats, the shingle hard to his feet. Humble and sometimes hungry he was in those days, but his heart knew joy.

And now. It was different now. Society! yes, he was in Society, money was his, and traps and a motor car. These things couldn't help him

now. He shook his head as he went on his way. Memories made things harder.

There was a perspiration on his brow, his heart like stone with fear. He was getting thin, haggard and worn. They told him he looked badly. "Exercise," he said, but as he said it he knew it for a lie. Yes, the threatening note was there. He felt it once again. This was no dream. It had come at last. He had been expecting it. He had earned it. To harry, to hunt, to search, it was his work, and he had done it. Yes, the pay was good, if anything could pay a man for this.

The overhanging trees grew closer, it was darker here, pitch dark, there was an edge to the path. No, not there, he was safer near the wall, he

moved in stealthily closer. He wanted to touch it, to feel it, but his hand refused to leave his pocket, refused to let go of the revolver that he grasped.

He was glad now the patrol were not with him, the men on it always talked. It's hard to hear noises when men talk, that's what it was. Listening! listening always, and thinking! God! how long this walk was, how hot! Yes, he'd open his coat. Blast it! these muggy nights were worst of all. Sometimes he stepped on fallen branches which crackled as he walked, and then again it was silence broken only by slish, slosh, and the mournful dripping of trees.

FLORENCE HACKETT.

## Headline Heroes

**I**T is Tuesday, and one o'clock. Some seventy newspapermen crowd the white walled little corridors that lead to the President's room. There has just been a Cabinet meeting, and a few large slow-moving men, Weeks, Hoover, Daugherty, thread their way out through the crowd, shaking hands here and there. For a few minutes more the crowd stands gossiping about, then all at once presses forward, pours through a narrow door, and surges up as close as it can about the desk. The bright light from the windows, through which one sees barren levels of the withered White House grass, at first blurs the figure in front of the desk.

A thick Middle-Western voice says, low and evenly, "How are you all?" The President, who gradually becomes more distinct, is shuffling written questions slowly from hand to hand, gazing distantly down at them through his pince-nez. The broad mouth spreads suddenly, purses, twitches in what you take at first to be suppressed amusement, but learn later to recognize as meditation. There are silences, broken with low answers to the questions in his hand. "Political prisoners—Friday." "No." "I don't think so." A longer answer, spoken distinctly—a distinctness that comes from the lungs. Our American distinctness of wind, not lips. A pause. Then: "I have here a friendly and courteous question, referring to the quadrilateral naval arrangement in the Pacific." With emphasis, the head suddenly raised, tilted curiously to one side: "The Executive does not understand that the treaty applies to the homeland of Japan any more than it does to the mainland of the United States."

If you go often enough to hear him, you will

notice with curiosity the kind of questions the President likes to answer. The more definite they are the less he is apt to say about them. But here is one which, he says, he will save till the end. It is a general question: "whether the Conference will result in a better moral feeling in the world," perhaps, or about the "success of the Conference as a whole." This kind of question he answers with a little speech, windy, mildly solemn, full of such phrases as "a new concord and a new confidence." At the end he may remark: "That's not very well expressed, but you get the idea."

There is dignity in his bearing, a benevolent, genial gravity, but with this assurance there is a touch of doubt and sensitiveness. "I am President, but I'm not an extraordinary man," you feel often to be in the back of his head. You have evidence of this when he talks of himself as "a Main Street citizen." You have further proof of it when one of us asks if commission merchants and middlemen might not be included in the invitation to an agricultural conference. The President lifts up his head, the light catches the round smooth planes of his face, the startling pockets under the eyes, and he leans forward eagerly. "An excellent suggestion! They should certainly be included! I am really much obliged to you for your suggestion!" He means it. He had not thought of this, and he is genuinely thankful for it. But neither in this, nor in anything that he says, is he completely engrossed. Mixed in with all the gravity, all the heartiness, there is a trace of self-conscious questioning, of a simpler self, snowed under, but not dead. That rich home-made voice, which lingers over "Uh-merican" and loves to prolong the word "great" with an unmistakably oratorical

tremolo, if it is part of him now, did not altogether naturally become so. How much he must have changed since he was a small boy—and how little.

The newspapermen go in to the President; Mr. Hughes comes out to them suddenly through a small door, and the newspapermen break up their groups in the shadow of portraits of past Secretaries and press into a ring about him, almost menacingly. "Well, this is an offday," he begins. "I'm afraid there's nothing to tell you." These words are barely uttered—in a deep positive muscular voice, when a fire of questions begins. "When M. Briand replied to you. . . ." The questioner pronounces it Em Bree-and, and Mr. Hughes's eyes light with a brief twinkle, though his amusement does not disturb the decorative sweep of his moustache and beard. More questions, catch questions, cross questions, silly questions, questions about Christmas, trying to squeeze some small drops of information from an international sponge which Mr. Hughes has just said was dry. He balances from foot to foot, or stands still, gazing, with his head high in the air, at the questioner. He breaks into answer, confident, clear, with easy gestures of his hands. A humorous illustration, a quick story, a hearty good-natured laugh, which, as another question breaks over him, vanishes instantaneously. "I can't say anything about that. You know my rule. I can't discuss anything the President says." Another question. Those wide serious eyes take on a different look, a strained look, almost of pain. But the question is answered, and perhaps there is another sudden turn of humor, when the face and the frank eyes and the neatly bushy beard contract and open suddenly, only to snap tight again the moment after. Is this the face that scrapped a thousand ships? The strain of such an effort is evident. Particularly evident on some difficult day, when the "I can't say anything about that" is more frequent, shorter, and the geniality, the humor, do not flow. At such times, under a languishing fire of questions, he backs toward the door, and goes out quickly, with his veteran head high in the air, and his legs rather wide apart.

Leaving the State, War and Navy building behind you—not turning back to look at it lest its ten-thousand pillared monstrosity haunt your dreams—you go past white colonial palaces, homes of the Red Cross and the Daughters of the American Revolution, past the Pan-American building, rather too clean and squarely beautiful. Here a sentry, in his regulated walk back and forth, calls out "Hey Mister, what's the time?" Other sentries guard the deserted drugget and the awning over

it that lead up mysteriously into the home of great decisions. You walk on to where, when the Conference started, stood twin obelisks of victory, fair and shining in white paint and plaster. Now,—and, say the cynics, it is an omen for liberty—all that remains of them is one huge pole laddered with cross pieces. Then the Navy building, built on the Ford plan; bare inhospitable rooms all alike, peopled with marines, newspapermen and stray anonymous official-looking individuals, carrying canes and documents.

In one of these rooms some thirty newspapermen sit about a makeshift table of identical cheap varnished desks pushed together. Blinding charmless lights. Nothing on the walls. The crowd, like a classroom, waits for its professor. Here he is: Admiral Baron Kato. The crowd rises. The Admiral, in faint but friendly English, wishes them a Happy New Year. "The same to you, Admiral, and we are glad you have recovered from your illness." Business begins. The Admiral does not conduct this in English, but through an interpreter with a Phi Beta Kappa key. Behind the Admiral sits, sly, amused and rotund, Mr. Debuchi, who handles his delegation's publicity. While the interpreter translates the first harmless questions, there is time to notice Admiral Kato's long delicate nose, his thin motionless hands, the blinking, tired eyes, with eyebrows in a perfect semi-circle as if raised in a perpetual frown. His slight figure sits sideways, looks at nothing in particular, seems aged, absent, infinitely weary and patient, yet unconscious of being either. "Has Japan ever given Semionov any financial support?" The answer comes second-hand: "In the past money has been given to Semionov, but this should not be interpreted as assistance. It was given by the last Cabinet when the Bolsheviki were not so strong as they are now, to stabilize Semionov." "How much was it?" "All I remember is that it was very little." "What money was appropriated?" "There was no appropriation. Every nation has such a special fund at its disposal. It was not furnished by parliamentary process."

While some of the questions which follow hot upon these are being translated, Mr. Debuchi leans forward for a few words with the Admiral. He listens, his expression does not change from one of distant, patient endurance, he turns back again. Dozens of questions. Then as the correspondents are beginning to scrape back the varnished chairs, the interpreter halts them. "The Admiral wishes me to say that as it might lead to misunderstanding, he thinks it will be more satisfactory to omit what he said about the money given to Semionov. It is a thing of the past." "Then we are to

take what he said as withdrawn—cancelled?" "Yes."

In newspaper language Admiral Kato spilled the beans, was tipped off, and then killed the only news of the afternoon. Yet he has not changed his expression of weary calm.

More usually Mr. Hanihara, vice-minister of foreign affairs, plays teacher for the Japanese. He is short, chunky, with very thick black hair, his face a pattern of tan rings and dark slits. He sits squarely at the table, hunched over it, his arms on it. He wears a grin both friendly and cautious. A questioner will find this impish, wary countenance, with its eyes almost completely closed, turned toward him, and will usually be rewarded with an answer which, in any language, would be unintelligible. The invariable peroration—a phrase repeated some thirty or forty times during the sitting—is "You see." Between this and the solid matter of the answer (usually a profession of ignorance) stretches a prodigious humming grunt, which breaks sharply toward the end into a higher and more violent snort originally the property of several members of the animal kingdom.

Later in the evening you may find Mr. Hanihara, in snowy white tie and waistcoat, dining all by himself in the Shoreham grill. He is scrupulously attentive to his food, but if he catches your eye will bow with a politeness which in ten centuries you could not hope to imitate.

Leave the Navy building, show your pass to the Marine, and you may climb the stairs into the Pan-American. Seven o'clock. In those clean marble silences, with endless stairs, black and white zebraed pillars, gold inscriptions, a small group of newspaper men are waiting. Upstairs, beyond Lord knows what blameless stony corridors, people are wrestling over the fate of Shantung. In a courtyard there is a dark mysterious tangle of indoor trees and plants. The newspapermen are smoking, swapping stories, speculating about whether there will be any real Shantung news tonight, betting on it. Time drags. A telephone tinkles listlessly. The atmosphere is the same as people have about them who are waiting for the arrival of a Boston and Maine train, posted as late. A State Department official comes down to say it will soon be over. We rise and stretch, as in the seventh inning. Another quarter of an hour. Then—"They're coming!" We crowd to the foot of the long stairs. A trickle of small, dark Japanese and Chinese secretaries with portfolios, one after the other, descend slowly, ten steps apart. At last Mr. Hanihara, who grins but grunts little. "No news." There must be, there shall be. Angry, laughing questions. "Well, what have you been talking about these two

hours?" Mr. Hanihara can't get away. He is pushed into a corner, still smiling, then squeezed through a narrow space between two pillars, from which he finally emerges with his coat and hat.

Another ten minutes. The Chinese appear. Dr. Koo, smiling, finished, with a charming English accent. He also is pressed, squeezed, he too answers from between the pillars, over his shoulder, through the arms of his overcoat. Now for Mr. Wang. Five hundred questions fired at him in five minutes. No real news. Deadlock again. We see him into his car. Somebody drapes the automobile robe about his feet.

Deadlock; no news.

The newspapermen scatter to tell a bored world how, when, where, and why there is no news, in two columns.

ROBERT LITTELL.

## Back to Nora O'Grady

**N**ORA O'GRADY insists we are old-fashioned. Something must be done about it, for to be considered conventional is the one abomination.

Nora, who is past fifty and a grandmother, "sews by the day" for most of our little group. Every so often she arrives, a compact, buxom little figure in black, carrying the inevitable black morocco handbag stuffed to neat but not bulging fullness. She stays with us for a few days at a time, briskly hewing down the discouraging pile of plain sewing and mending, listening to us, good-humoredly scoffing at us, and filling the house with the genial warmth of her personality.

She goes the rounds of twenty odd families, couples, or parts of families that make up our little coterie in the West Twenties—a suburb of Greenwich Village we call it, who can no longer afford the Village's remodeled grandeur. During the year, consequently, Nora becomes familiar with the events and opinions in our circle, "seeing us through the eye of her needle," as Julie says.

Nora is inflexibly conventional in habit, speech, experience, in everything except her attachment for us. She was married at eighteen, widowed at thirty, but single-handed brought up her large family. She believes in the essential superiority of the male, original sin, a blazing hereafter, the futility of woman suffrage, the purse as a token of marital authority, and woman's inevitable consecration to suffering.

We, of course, are extremely modern in our activities. In our circle the women smoke, bob their hair, and use their own names even if mar-

ried to the men they live with. Some have an incipient artistic career, others merely hold jobs with organizations, or they write publishers' blurbs or gather statistics for something. But even those who don't work and don't have to, believe staunchly in economic independence for women. We women only rarely dine in public with our own husbands, although it's considered sweet and touching for the unmarried to be inseparable. There is quite a strict though tacit code among us—wives and husbands ask each other no questions, the single standard means more freedom for both, and what children there are bring themselves up montessorily.

For instance, there's Julie. She suffered from a repressed youth, but she had herself "psyched" and now is relieved of all inhibitions. She is, according to her own description, an intelligent neurotic with no phobias. Julie has no curbs on self-expression and she charges boldly through fences guarding restricted conversational fields, frequently leaving the occasional stranger bewildered or embarrassed. Julie ferrets out the Oedipus complex from its sanctuary in an anaemic young man just introduced. Chattering to a mixed group including a timid professor of romance languages, a shoe manufacturer from Brockton, Massachusetts, and somebody's daughter vacationing from a southern seminary, she discusses a recent major operation with the detached air of a medical specialist, although, it must be confessed, with less scientific accuracy. But then, she is interested chiefly in leading up to the Freudian implications of her pathology. Her love affairs too, as well as her relations with her very pleasant husband, are served publicly, and analyzed in merciless and detailed self-revelation.

But Nora O'Grady persists in classifying Julie as the most old-fashioned of our group. Her plump little hands flying diligently over miles of fabric, she discourses about us amiably.

"I like you all because you're the same as the women I knew when I was young, and Miss Julie, she's the most old-fashioned of the lot. You all do the same things and you talk the same.

"You think you're great shakes going to work every day like your husbands?" She sighs pleasantly as she bites off a thread. "Ah well, didn't we all do the same when our husbands didn't earn enough? 'Twas O'Grady himself said to me the day we was married, there's no sense in me giving up the fine steady customers I had and me getting my dollar and a half a day the year round and presents besides. And so I kept on sewing at home when I couldn't go out by the day, and O'Grady never said a word against it.

"There was lots of ladies that took in washing even when their husbands had steady jobs. Oh, it just passed the time pleasantly for them, they said, and they liked to earn the extra penny. And there was ladies that had nice little candy or grocery or dry goods and notion shops—and why not? 'Twas a fine thing for a woman to be having money of her own and not teasing her husband for every cent. Now, O'Grady was that fond of equality that he'd think no more of borrowing a dollar from me than I of him." Nora's head is bent primly over her work, but I can almost hear the twinkle in her merry brown eyes.

"And then there's this freedom business of Miss Julie's. I mind her saying the other night the room so full of tobacco smoke I could hardly see the face of her—and I want to tell you we ladies smoked too, though maybe it was only a corncob pipe. Miss Julie says she never interferes with her husband's goings and comings—he goes his way and she goes her way, and they're good friends just the same. Lord love ye, how could she stop him? O'Grady and I never went out together neither. He had his clubs, and he was a good Tammany man, was O'Grady, and never a night did he come home before twelve. But you don't suppose I asked him any questions? And he didn't come la-de-daing asking where I'd spent the evening."

Here I corner Nora. "Now you know, Nora, people were more conventional. You couldn't go out with a man after you were married to somebody else. Your husband wouldn't let you—the neighbors would gossip. But all of us do these things without disturbing anybody."

Nora attempts a sneer, but can make only a chuckle of it. "As to gossip, what else do you talk about among the whole lot of you young women but who was seen with who, and d'you suppose his wife knows, and have they broken off yet?

"I remember a friend of O'Grady's that ran away with the baker's wife and when they got tired of each other and came back a-scared, his wife ups and gives a big dinner and both husbands and wives get settled with their lawful spouses and everybody's happy and no more 's said. But nobody called it free love. Miss Julie here—remember the time her husband tried to explain how he came to have a love letter in his pocket, and Miss Julie went around for weeks telling everybody about it, but saying as how she didn't mind because she believed in being free!

"And when she gets started talking of her insides, and what she dreams of at night and what do you suppose it means—why, that's just like all of us women used to talk. Of course, in those days there weren't fancy names like complexes and

phobias and repressions, and the women used to whisper instead of talking out loud in front of the whole company. But it was just the same diseases and the same dreams that they talked about."

Nora is positive and immovable about the man-woman situation. It is just the same as in her day. The husbands are neglectful after the honeymoon, but their neglectfulness has another name—the women are just as hardworked—the children just as unmanageable. Reluctantly she admits only

one slightly new phase. It is that the modern woman manages to convince you that she likes it all, whereas the old-fashioned woman "meowed" about it, when it hurt.

We have been our freest, most unrepressed selves with Nora, but she won't budge, and sometimes even Julie despairs as she listens to Nora's invulnerable comparisons, and wails, "Horrors—can it be that even I am old-fashioned?"

ELEANOR GILBERT.

## V E R S E

### Suspense

The dark red winter trees are bleak  
With something that they dare not speak.  
Silent they stand, and will not stir  
To greet the flying messenger  
Who passes on across the hill,  
Leaving them desolate and still.

What memories of summer hymns  
Lie hushed within those leafless limbs?  
What secrets frozen in the bud  
Are slumbering until the flood  
Of resurrection call them forth  
To teach new lovers wandering north?

Yet, in this vast and final hour,  
We care not if tomorrow's flower  
Waits eager-petaled to arise,  
Or with the dead forever lies  
Here in this quiet, lonely land,  
Where dark red trees of winter stand.

ROBERT HILLYER.

### A Gray Day in California

Gray and timid, sad and chill  
The morning crouches on the hill.  
Is this the glad and golden morning  
That crouches heavy-eyed and ill?

In London early morning rain  
Has often washed my window pane,  
And rolled along the yellow gutters:  
And here come misty skies again!

A sweet and a surprising thing  
Is daybreak in an English spring;  
When on the alder in the garden  
In tender light the linnets sing.

So rarely, rarely did it come!  
But now I cannot count the sum  
Of these recurring brilliant mornings—  
So many that my praise is dumb!

This gray day comes as something lost  
And found again—a friendly ghost,

The air of England. And I wonder  
Whether I love the sunshine most.

Yet sunshine taught me love of gray,  
Always unvalued till today;  
When in her shy and secret beauty  
The day broke o'er me, cold and gray.  
THEODORE MAYNARD.

### Snow Water

They say snow water is not good to drink;  
The snow, between the granite and the suns,  
Yields up a vintage. Crystal-wild it runs,—  
Lupines and shooting stars on either brink.

But all is sparkling sickness there for men;  
Wait while it lashes downward from its birth,  
Wearing a rebel way against the earth  
Till earth has conquered. You may drink it then.

But here, where all the cliffs are laced with scars  
Of old world-wrenching wounds, its silver grips  
Stuff that is almost poison to our lips:  
Free space, sheer sun, the tempests and the stars.

FRANK ERNEST HILL.

### We Never Left Our Love Unsaid

We never left our love unsaid  
But always made it plain with speech.  
With words we cried it, each to each:  
Where only silences can reach  
We thought by words to touch and tread;  
With words our love was overspread,  
With words, with words our hearts were wed.

We never left our love unsaid,  
We never let it take its way  
Unwatched and hid. Too little dread  
We had of love, of love's strange sway.  
With words we watched our love decay,  
With words we mourned it, with words we pled  
And followed after where it fled  
And would not leave its death unsaid.

HELEN HOYT.

## New Symptoms in France

FRANCE has been gradually forfeiting the sympathy of a considerable portion of the world's intelligentsia these last three years. Nothing can be more evident to the Frenchman who thinks he can learn something by residing out of France, studying the foreign newspapers in a foreign atmosphere, and trying to read under the surface of courteous remarks and affable flattery. The Clemenceau and Leygues governments, and, to a lesser extent, the Briand Cabinet—it must be owned—have done about all they could to arouse the suspicions of the liberal thinkers in both Europe and America.

First and foremost, Clemenceau and Tardieu—whether badly informed, or blind to what did not fit into their calculations—disastrously failed in the fall of 1919 to extend a helpful hand to Kurt Eisner and the German Republic. And that is one of the irreparable mistakes of French politics in the past—the sort of mistake that vitiates the neighborly relations of two countries and the international harmony of a whole continent for decades to come.

Then the French reparation policy invariably lagged behind the requirements of the times and of common sense—with the curious result that, up to very recently, Germany has been consistently asked to do what she could not do under the prevailing circumstances, but has purposely not been requested to do what she *could* do, that is to rebuild and furnish workingmen's houses in Flanders and Artois.

The reason for that paradoxical situation, which has long been known in France, and is at least suspected abroad, is not likely to reflect much credit on French internal politics: the French government for the last three years has been largely in the hands of leaders or representatives of the French industrial magnates who cynically want to keep for themselves the benefits accruing from the huge contracts which will be signed sooner or later for the rebuilding of the 300,000 houses destroyed by the German and the Allied artilleries!

Further, the few French periodicals which have readers in foreign countries, the *Revue des Deux Mondes*, the *Illustration*, the *Temps*, are the organs of the Republicans of the Right, and it is in their columns that Tardieu and Poincaré make themselves the champions of their own politics, and, more generally, the mouthpieces of the two rival groups in the Bloc National: the

Clemencistes and the Poincaristes. The only French daily at all read in America is the *Temps*, which prints every day the impossibly prejudiced and heinous articles of its Berlin correspondent, Guillerville. But even the other French reviews, such as the *Revue de France*, the *Revue Hebdomadaire*, the *Opinion*, stand for somewhat similar ideas with regard to the French Rhine policy, the French Russian policy, the French Syrian policy, the French Moroccan policy . . . And noted French Academicians, brilliant French professors of history have notoriously allowed themselves to be carried away, during and since the war, by that high wave of nationalistic feeling and reactionary thought.

But what has perhaps contributed most to systematizing the belief in this country that militarism is rampant in France, is the fact that, apart from Madame Curie,\* the only prominent personalities that France has thought fit to export to this continent until recently have all been marshals or generals: Nivelle, Fayolle, Mangin, Foch. No wonder then, that France should be credited with more imperialism than she has actually indulged in, and that exaggerated reports of the strength of her army should be believed even by her best friends.

That France has too many soldiers, even in those troubled times, is unmistakably true—so true that even the government recently acknowledged it by calling back to France several of the Gouraud divisions from Syria, and trying—unsuccessfully, it must be added—to cut down Lyautey's force in Morocco by 25,000 men.

But it should not be forgotten that France's case is much that of Poland in the spring, during the Korfanty insurrection. Everybody remembers that the world press at that time was full of news regarding the concentration of Polish troops near the Silesian border. Now it so happens that the writer's brother-in-law—who remains a Polish cavalry officer until he can find a more desirable job—was assigned a year ago to a regiment with headquarters not far from Kattowitz. And he asserts—and he should undoubtedly know—that at the time of the Korfanty raid, his, like all Polish regiments, was a skeleton regiment. The complement of horses was about two hundred when it should have been around a thousand. The balance

\* We do not mention Viviani who limited himself to the eastern coast, nor Briand, the French envoy to the Disarmament Conference.

were busy ploughing. Four-fifths of the men were indefinitely on leave, and worked on their farms, because the Polish government could not maintain them. And all that the few remaining officers had to do was to take pleasure rides through the country mud, and enjoy the news in the paper about "the big concentration of Polish troops."

Similarly, most French regiments are skeleton regiments, with one battalion, instead of three or four. And what struck us most in France last summer was that the barracks were empty in such heavily garrisoned towns as Havre, Rouen, Chartres or Strasbourg. Soldiers are rare sights even in Paris. All the available poilus are in the Rhine valley, in Silesia, in Morocco, and as France has only two "classes" under arms (as against three before the war) the usual American estimation of the French force at 800,000 men is nothing but a false guess.

Nor is this the only case in which France has been misrepresented abroad, for lack of adequate information. It is thus currently believed in this country that French contemporary literature, the drama, the literary magazines, and the younger generation of Frenchmen are permeated with the spirit of imperialism and "France über Alles," and that the spirit of true democracy and social justice is quite extinct.

A careful examination of the French literary production and of the evolution of public opinion soon persuades one that this is not so. Of course the books officially patronized and recommended for export are those of such men as P. Bourget, M. Barrès, L. Madelin, etc. You cannot expect the Committee France-Amérique to recommend Barbusse's novel *Clarté*, or his brilliant political pamphlets *La Lueur dans l'Abîme* and *Le Couteau entre les Dents*. Georges Duhamel's admirable essays in liberal thought, *Entretiens dans le Tumble*, are not known here. P. Reboux's anti-militaristic novel *Les Drapeaux*—a popular book in France—is ignored. The important rôle of *Clarté* as a printing press for advanced thinkers is not even mentioned. The biting and remarkably successful series of Parisian lectures by Gouttenoire de Toury on *La Politique Russe de Poincaré* is hushed, while the defence that Poincaré offered under the auspices, of the conservative *Cercle des Annales* receives much publicity.

Similarly, who in this country has read that the most popular new plays in Paris recently were, for instance, *The Chains* by G. Bourdon, in which a sympathetically presented Slav anarchist, Lydia Wladimirówna, eloquently denounces "la patrie"

as a "concept transitoire," *L'Annonciateur*, by Bataille, in which the "red" hero, Dartès, a young man equipped with a full array of virtues, curses war—and carries his audience with him, or *La Captive*, by Ch. Méré, in which the reconciliation of nations—read of France and Germany—is warmly advocated? The mere fact that the first of these plays was staged at the bourgeois *Théâtre Français* is significant in itself—as significant, but not so exhilarating as the public rebuke administered in the *Revue des Deux Mondes* by that standard Academician, René Doumic, to the directors, to the authors and to the audiences who had so wickedly plotted against the security of the state!

Those were but advance symptoms of a progressive evolution that is becoming more and more apparent to those who have studied with some measure of attention the pendulum movement of nationalism and clericalism in France during the last fifty years. Those symptoms are less conspicuous only because the power for the bad wielded by the "grande presse d'information" has enormously increased of late, at least in France, and allows the plutocratic interests to make or suppress the news at will.

However, if we disregard the "revues d'avant-garde" in which extreme radicalism of aspirations and independence of thought are more than ever the rule: *Les Humbles*, *Les Cahiers Idéalistes*, *Les Images de Paris*, etc., there now exist at least three periodicals in which the nefarious policy of the Bloc National is mercilessly exposed.

One of them is a bimonthly review, *Clarté* (until recently a weekly newspaper), the revolutionary organ of Barbusse and Anatole France. Founded in 1919, in the teeth of terrible difficulties (paper was then quoted at prohibitive prices, and the supply was more or less "trusted" by a few wealthy manufacturers who sold their goods only to "respectable" buyers), it has been consistently, and sometimes scurrilously, destructive. But it has proved useful in that it has been given publicity to interesting and reliable material regarding Soviet Russia.

*La Ligue des Droits de l'Homme*, the organ of the well-known liberal club that the affair of Dreyfus made famous, keeps aloof from politics, but, through the ideas that it defends, creates an atmosphere favorable to financial reform, international agreements, disarmament and the League of Nations.

The third periodical, the weekly *Progrès Civique*, is not yet three years old, but, with its circulation of 60,000, plays an increasingly promi-

ment part in the shaping of public opinion in matters of interior and foreign politics. The Progrès Civique, by the way, was conceived somewhat along the lines of the American liberal weekly by its founder and editor, H. Dumay, who has acquired in the United States an excellent command of English (an accomplishment unusual with the average French review editor). Its chief supporters, beside deputies of the left and professional men, are village schoolmasters and schoolmistresses, postal or railroad employees, bank clerks, farmers or little shop-owners, who recently collected 150,000 francs between them, mostly in five and ten francs donations, because the Progrès Civique, started on a very ambitious, very "American" plan, was temporarily in financial straits. The Progrès Civique has been consistently following a policy of protecting the rights of the poor against the daring encroachments of the rich. A few months ago it published a remarkable series of articles by Caillaux on the international financial problem, and it advocates a system of taxation that would spare the poor and weigh on the rich—for it is unfortunately true that at present the rich in France are spared, while the poor are overburdened. Admirably informed, it mercilessly denounces all the dishonest money-getting schemes of the merchants in power, judges the results of the Clemenceau policy so harshly that the average American would object, reminds France every now and then that she is not "the navel of the world" (France needs that reminder every other day), does not care for generals and marshals, does not object to welcoming occasional German contributors, prints measured articles on the German peace organizations, which it considers earnest and increasingly influential, urges a policy of expectant reconciliation between France and Germany (see Aulard's article in the September 10th issue on what our attitude should have been toward the German Democracy) and is of genuine help toward Russia. In short, the Progrès Civique has become a real force for the cleansing of the French political atmosphere and will no doubt play a prominent part in the next legislative election.

Perhaps a few copies of the Progrès Civique reach America, although official France does not think that periodical at all good for Americans. But not so with a score of totally unknown French newspapers, organs of the radical or radical-socialist left, which are fighting vigorously for the union of the parties of the left: L'Ere Nouvelle, La France Libre, La Lanterne, Le Rappel, Bon-

soir, in Paris; La Dépêche de Toulouse, La France de Bordeaux et du Sud-Ouest (circulation: 340,000), Le Populaire de Nantes, Le Progrès de Lyon (circulation: 285,000), Le Radical de Marseille, etc., in the country.

The most interesting of those liberal papers is perhaps the Ere Nouvelle, founded December 27th, 1919, by a group of young professors. It has perhaps most clearly realized that only the absence of team-work between the parties of the left made the success of the reactionary Bloc National possible on the 16th of November, 1919. Therefore it is working for a coalition of all the liberal parties in France against the Bloc National, with the help of such men as Boncour, Doumergue, Herriot, Painlevé.

There are many signs that the Bloc, which has discredited France abroad, is not only itself discredited in France, but begins to disintegrate. Since the autumn of 1920, many successes have been scored against it, a few of which should be mentioned, for they have generally been overlooked in this country. In the Senate, for instance, it is the indefatigable opposition of Victor Bérard against the expedition in Syria and Cilicia, which finally bore fruit, and rallied the Commission on Foreign Affairs to a more reasonable appreciation of the "century-old French interests in the Levant." Among the deputies of the Bloc, quite a number have gently crept leftwards and noiselessly started new formations, like the so-called intergroupe.

But the most significant events are no doubt the results of recent by-elections in the departments of Haute-Savoie, Hautes-Alpes, Oise, and a few others, in which the Bloc National suffered complete defeat at the hands of the liberal republicans. The smart was so bitterly felt in the Bloc that the French deputy Soulié publicly called the government and préfets to the rescue, while his colleague Bellet very ingenuously proposed to annul by-elections that turned out against the parties of the right.

Those are but symptoms. The forces of reaction have not yet said their last word in France. But liberal thought is as alive as ever, although temporarily crippled in its expression, and, as the editor of the Ere Nouvelle, Yvon Delbos, says in one of his recent articles: "The tide is stronger than those forces. Nothing will stop it, for, in France as anywhere, democracy *will* head toward reform as naturally as the sap of plants *will* ascend toward light."

FRANCK L. SCHOELL.

# The Mooney Case

## A Reply to Mr. Frankfurter

**SIR:** Public duties have prevented me from making an earlier reply to Mr. Felix Frankfurter's letter in the New Republic of October 19th. I am in some doubt as to whether any reply is either necessary or deserved; for, when Mr. Frankfurter gratuitously charges me with a flagrant perversion of the facts and with "reckless misrepresentation," he so far forgets the amenities of courteous controversy as to forfeit any right to have his article noticed. I waive this point, however, inasmuch as he raises an issue of public importance.

In my casual reference to the Mooney case in your issue of October 12, 1921, I said:

I may frankly say that I do not even know what the Salsedo case is, and as to the Mooney case, I know little more than that it was tried before a jury, and the sufficiency of the verdict was reviewed not merely by the trial judge but also by the highest Court of California, and then by the Governor of the State of California, in considering the question of executive clemency.

Mr. Frankfurter charges this is "a reckless misrepresentation of the facts of the case." He suggests, with an affected indignation, that the spirit of *noblesse oblige* requires that the Solicitor General of the United States "add his voice of protest against the failure to vindicate the adequacy of Anglo-American law" in the Mooney case.

I expressed and still express no opinion as to whether Mooney was guilty or innocent. I simply affirmed the fact that it was not my duty to sit in judgment on the judiciary and executive authorities of the State of California.

Since Mr. Frankfurter's letter appeared, I have made an examination of the record, to see how far my impressions of the nature of the legal proceedings in California were justified by the facts, and I find the facts to be as follows.

Two men, Billings and Mooney, were indicted for the heinous crime of exploding an infernal machine in a peaceful parade in the streets of San Francisco, whereby ten persons, including women and children, were killed and some fifty others were maimed and injured. If they were guilty, it was a most heinous crime against God and man.

Billings was first tried and convicted, after a trial which his attorney admitted was entirely fair. Thereupon, Mooney was put on trial on January 3, 1917, and the length of the trial and the volume of testimony that must have been taken can be indicated by the fact that the verdict of the jury was rendered on February 9, 1917.

Under the law of California, the nature of the punishment lies in the discretion of the jury, and the jury had so little doubt as to the guilt of the defendant that it voted the death penalty.

Subsequently, the defendant's counsel charged that an important witness for the prosecution (one Oxman) had been guilty of perjury and subornation of perjury. That the verdict did not rest solely upon the testimony of this witness was shown by the following statement of the foreman of the jury:

The jurors felt that the structure of the evidence produced by the prosecution was so strong that they

could not conscientiously follow their oaths as jurors and recommend life imprisonment. You ask me if it was the evidence of Frank C. Oxman, the chief witness of the prosecution, that convinced the jurors of the guilt of Mooney. It was not this alone. It was the whole case that convinced us. We felt that the volume of evidence introduced was *overwhelming*, and that we had no alternative but to agree on a verdict of guilt.

After the verdict was rendered, a new trial refused, and judgment pronounced, an appeal was taken to the Supreme Court of California, and while the case was in that Court on appeal, the defense sought to obtain a remand of the case to the Court below, with a view to a new trial, on the grounds above indicated. Mr. Frankfurter says that the Supreme Court, "by reason of a technical requirement of the California code," found itself unable to remand the case for another trial, "and therefore was compelled to concur in the result" by shutting its legal eyes to the most important fact about the Mooney case, viz., the discrediting of the State's chief witness.

It may help the reader to determine who is guilty of "reckless misrepresentation" if I quote the language of the Supreme Court of California, as reported in 171 Pacific Reporter, page 691. It will there appear that it was not a technical provision of the California code, but an express provision of the California constitution, which limited the power of the Supreme Court to review a conviction in a capital case "to questions of law alone."

When, however, the Supreme Court of California reviewed the case on its merits, we find that, in more than one place, it took occasion to express its concurrence in the sufficiency of the evidence to support the verdict. Thus, the Supreme Court said:

All that this Court may do is to determine whether or not there is sufficient evidence of any sort to support the verdict, and we cannot escape the conclusion that it is *amply supported*.

And again:

It will be seen from the review of testimony given above that both the manner of placing the deadly bomb and the defendant's guilty connection therewith *find abundant support* in the evidence.

And, finally, the opinion concludes:

From the record before us, it appears that the defendant was confronted by testimony *from many sources which fully supports* the verdict found by the jury. He was defended with great ability in the superior court, and he was similarly represented in this court. We cannot find that he was deprived of any right, statutory or constitutional, or that any material error of law was committed calling for a reversal of the judgment or an abrogation of the order denying his motion for a new trial.

Thus the Supreme Court held that the defendant had had his day in Court and, after a full and fair trial, had been convicted upon "ample" testimony, and that, under these circumstances, only the Executive could intervene to nullify the processes of law by reason of after-discovered testimony. Were this not so, there could be no finality to any trial of public importance; for Mr. Frank-

furter, as a former Assistant District Attorney, must realize how easy it is for skillful counsel in an important criminal case, after their client has had his day in Court, and where the sinews of war are ample, to secure more or less credible testimony to impeach one or more witnesses for the prosecution.

The matter was then referred to the Governor of the State to review the case under the broader power of executive clemency. I stated that the Governor concurred in the result by refusing to free the defendant, but Mr. Frankfurter claims that the Governor commuted the sentence from death to imprisonment for life because of his inability to concur in the result of the trial.

How disingenuous this serious impeachment, not merely of the fairness but of the humanity of the Governor of California is, will presently appear. I say "humanity" advisedly; for if the Governor, upon a careful review of all the testimony, had been satisfied that Mooney had been unjustly convicted upon perjured testimony, and then imprisoned him for life, he would have been guilty not merely of lack of logic, as Mr. Frankfurter suggests, but of humanity as well.

Let us see, however, what the facts are and then again determine who is guilty of "reckless misrepresentation."

Growing out of the Mooney case, a nation-wide campaign was instituted to impeach the fairness of the courts of California, and especially of the District Attorney who had prosecuted the Mooney case. The Grand Jury of San Francisco County, on May 3, 1917, investigated the whole matter, under the direction of an Assistant Attorney General, and, upon the completion of the investigation, they made a report, from which the following statement is copied:

After a careful and conscientious investigation covering every phase of the charge of subornation of perjury preferred against F. C. Oxman, conducted by this jury under the able direction of Robert M. Clarke, Assistant Attorney-General, we, the jury, find no cause for criticism of the District Attorney's office in connection with the bomb cases, and we unanimously commend Charles M. Fickert for the able and fearless manner in which he has performed his duties to the people of the State of California in connection with these cases.

The matter was then taken to the polls, on a vote to recall the District Attorney, and the people of San Francisco vindicated him by an overwhelming vote.

At this stage of the controversy Mr. Felix Frankfurter, at the instance of President Wilson, appeared on the scene. He was Secretary and Counsel of the so-called "Mediation Commission," and was directed to proceed to San Francisco to investigate the Mooney trial. It is to the report of this Commission that Mr. Frankfurter refers in his letter and which he asks me to take about ten minutes to read. I have wasted that amount of time in reading the report, and it left nothing undone to discredit its own conclusions. It opens with a statement that, pursuant to instructions, it investigated the matter "informally and without publicity." I decline to condemn the authorities of California upon an *ex parte* informal and secret investigation. The Commission did not even have the fairness to consult the men whose official acts it was about to discredit. The District Attorney says:

The informality [of the investigation] consisted in accepting, without question, the unsworn statements of

the attorneys and sympathizers of the defense, without consulting any one in authority in connection with the prosecution and without giving any consideration to the testimony of the prosecution's witnesses.

Before the District Attorney could make reply, as he sought the opportunity to do, the "Mediation Commission" had left San Francisco. His telegrams to the Mediation Commission, asking an opportunity to be heard, were left, according to the District Attorney's statement, unanswered.

The finding of the Commission was based upon its belief that the witness Oxman had been guilty of perjury and subornation of perjury; but, unfortunately for the Commission's findings, Oxman was subsequently tried for subornation of perjury and acquitted. Subsequently, he was arrested for the crime of perjury—and the trial judge dismissed the complaint, because those who had made it admitted in open Court that they could produce no proof in support of the charge.

All this, however, mattered little to Mr. Frankfurter's "Mediation Commission." It had gone to California to save Mooney, even if it were necessary to impeach the fairness of the Courts of California and the humanity of its Executive.

This would be incredible were it not that, when the Commission's report was published, Mr. Frankfurter gave the statement to the press, which contained the destructive admission that

a desire to appease the liberal element in Russia was paramount in the minds of the Commission.

In Mr. Infelix Frankfurter's report, I find less sympathy or concern for the victims of the massacre than for its "paramount" purpose "to appease the liberal element in Russia."

I cannot do better, in this connection, than to quote the just retort of the District Attorney:

The Commission in their conclusions moralize upon the duties we all owe to the cause of democracy. We venture to suggest in this regard, however, that democracy has no worse enemy than the man or set of men who, upon the unsworn statements of interested persons and without considering both sides of the case, undertake to set aside the verdict of two juries, which said verdicts have been sustained by the trial and appellate tribunals, in order to satisfy the demands of anarchists on a different continent, whose views are entirely out of harmony with democracy as well as any other kind of organized government.

To all of which, I, for one, say "Amen." To stifle the cry for justice of cruelly murdered children "to appease the liberal element in Russia" is unlike anything that we have hitherto regarded as American.

As Mr. Felix Frankfurter is a member of the Bar, was an Assistant District Attorney, and later held important positions in Mr. Wilson's administration, I would, under ordinary circumstances, be loath to believe that he could have been guilty of the incredible ineptitude of admitting, not only that his investigation was secret, but that its "paramount" purpose was "to appease the liberal element in Russia." But his naïve admission becomes more credible when we find that the report of the Commission shows the same concern. Thus, the report says that it was

well known that the attention to the situation in the

East (as to the Mooney case) was first aroused through the meetings of protest against the Mooney conviction in Russia

and that—

from Russia and the Western States, protest spread to the entire country, until it has gathered momentum from many sources;

that—

the liberal sentiment of Russia was aroused, etc.

Let it not be forgotten that the Commission itself, in its report, found that Mooney, at the time of his arrest, was "associated with anarchists," and its report adds: "He was a believer in 'direct action' in labor controversies. He had once been indicted for attempted dynamiting of the property of a San Francisco public utility; but, after three trials, was acquitted."

That Mooney was a dangerous radical and an avowed anarchist, I do not understand that even Mr. Frankfurter disputes.

It was with reference to such a dangerous radical that President Wilson addressed, over his own signature, the following two telegraphic communications to the Governor of California:

With great respect, I take the liberty of saying to you that if you could see your way to commute the sentence of Mooney, it would have a most heartfelt effect upon certain *international* affairs which his execution would greatly complicate.

and—

I beg that you will believe that I am moved only by sense of public duty and consciousness of the many and complicated interests involved when I again most respectfully suggest a commutation of the death sentence imposed upon Mooney. I would not venture again to call your attention to the case did I not know the international significance which attaches to it.

Mr. Frankfurter accuses me of "reckless misrepresentation" in stating that the Governor of California concurred in the justice of the conviction; but the Governor himself says that he commuted the sentence "because of the earnest request of the President for commutation." The Governor was further actuated by the fact, as stated by him, that "by commutation to life imprisonment Mooney's case will be in the same status as that of Warren K. Billings, who was convicted of the same crime and received a sentence to life imprisonment."

What knowledge, may I ask, had either Mr. Frankfurter or President Wilson of Mooney's guilt or innocence, or what right had either of them to interfere with the administration of justice in the State of California? This question presents the real issue between Mr. Frankfurter and me.

He affects to be indignant that I should be indifferent as to whether the Mooney trial was or was not a miscarriage of justice. This shows an amazing ignorance of the nature of our dual form of government, which, in a lawyer of Mr. Frankfurter's standing, is remarkable. If the Department of Justice should convict a defendant in the Federal Courts of a crime against the Federal laws, and the Governor of California should appoint a commission

to inquire into the fairness of the trial, the Federal Government would regard it as a foolish impertinence, and if the Governor of California should follow it up by bringing pressure upon the President of the United States to exercise the pardoning power, it would be properly regarded as a piece of official effrontery.

How does it differ when the positions are reversed? What right had either the President of the United States or his appointee, Mr. Frankfurter, to sit in judgment upon the judiciary of California? Conceding that the President, being in charge of our foreign relations, may, in a proper case, interest himself in any proceeding in the State Courts, which affects such foreign relations, was it a rightful employment of his great influence to rescue a convicted murderer from full punishment "to appease the liberal element in Russia"? The Soviet government was then in power in Petrograd. Trotsky and Lenin were then inflicting horrors upon Russia, to which the worst excesses of the French Revolution were, by comparison, as harmless as a Sunday School picnic.

It was a part of the same policy which led some one in the Wilson administration—perhaps Mr. Frankfurter can tell us who it was—to intervene to secure the release of Trotsky when the English government had the arch-anarchist in irons at Halifax. Will Mr. Frankfurter also explain what was the subject of his correspondence and interviews with Santeri Nuorteva, the close associate of Maartens, the Bolshevik ambassador, in May, 1918? Did it refer to the Mooney case by any chance? This question is not an insinuation, for I confess my ignorance of the nature of Mr. Frankfurter's dealing with the emissaries of Lenin and Trotsky, but the coincidence of dates with the attempts to set aside the Mooney conviction "to appease the liberal (?) element in Russia" naturally suggests the inquiry.

Let me say again that I have no knowledge as to whether Mooney was guilty or innocent. I know as little about that issue as President Wilson or Felix Frankfurter. What I do know is that their interference in the administration of justice in California "to appease the liberal element in Russia" was a violation of that basic principle of our institutions, home rule. Whatever good effect it may have had in Russia—about which I may express a grave doubt—it could only sap the authority of the laws and the government of California, and therefore weaken the integrity of the Union.

If Mr. Felix Frankfurter cannot appreciate this fact, then it may be gravely questioned whether he is a desirable member of the faculty of the Harvard Law School, and whether his true "spiritual home" should not be in his native country, Austria. In Vienna, he would find a more sympathetic audience in his attempts "to appease the liberal element in Russia," while in the United States there is still—thank God—an old-fashioned hatred of anarchy and anarchists.

The American people, in their sweeping condemnation of the Wilson policies, in part had in mind this and similar attempts to placate the spirit of radicalism. Mr. Wilson's mistakes, which cost the world so dearly, were not due to his Cabinet, so much as to his "kitchen cabinet," of which Mr. Frankfurter was a shining light, and which was composed of some able and well meaning men and some who were either meddlesome doctrinaires, political adventurers, or, at worst, kindergarten Bolsheviks.

JAMES M. BECK.

Washington.

## In Answer to Mr. Beck

**S**IR: Mr. Beck and I agree that "an issue of public importance" is involved in this discussion. The public interest alone justifies it and should determine its scope. Therefore the school of red herrings which Mr. Beck has let loose must not be allowed to divert strict attention from the "issue of public importance." I leave to the judgment of his own professional conscience the resort, by a Solicitor-General, to atmospheric innuendoes.

So experienced a lawyer as Mr. Beck will, I am sure, readily assent to the importance of defining the issues of a discussion. This correspondence, I submit, raises at least three questions of public concern:

I. The fairness and accuracy of the Solicitor-General's summary of the situation, presented by the Mooney case, in his letter in the New Republic of October 12, 1921.

II. The fairness and accuracy of the statement now made by the Solicitor-General, as to "the facts" of the situation presented by the Mooney case, after the Solicitor-General had made "an examination of the record."

III. The propriety of President Wilson's action in charging the President's Mediation Commission, in September, 1917, with the duty of inquiring into the circumstances attending the Mooney case; the propriety of the Commission's action in obeying the President's instructions; and the fairness of the methods of the inquiry and the report by the Commission upon the situation.

Fortunately, these issues do not lie in the realm of opinion. There are incontrovertible facts available, and by these facts the issues must be judged. Unfortunately the record relevant to this discussion cannot be printed in its entirety, since it would require at least a whole issue of the New Republic. I am, therefore, restricted to the pertinent and representative extracts. The professional reader will, I hope, turn to the full text of the documents to which references are made. The gravity of the issues is such that one feels justified in asking the closest attention to the documentation which is here made. For the controversy is not between Mr. Beck and me, but between Mr. Beck and the record.

I. The fairness and accuracy of the Solicitor-General's summary of the situation, presented by the Mooney case, in his letter in the New Republic of October 12, 1921.

Mr. Beck now refers to his "casual reference to the Mooney case in your issue of October 12, 1921." I do not know what implication Mr. Beck wishes to convey by "casual reference." I do know that the Solicitor-General of the United States devoted practically an entire paragraph of nearly two hundred words to a characterization of the Mooney case. I also know that the Solicitor-General now quotes only one sentence of that paragraph, and omits the vital portion of the paragraph, namely, his "inability to sit in judgment on a result in which twelve jurymen, a trial judge, a Supreme Court, and a Governor of a State alike concurred." This was the characterization of the Mooney situation, not by a layman, but by a distinguished lawyer now holding one of the highest offices open to a lawyer. When the Solicitor-General of the United States, wrote that "twelve jurymen, a trial judge, a Supreme Court and a Governor of a State alike concurred" on the "result" in the Mooney case, the natural meaning to be drawn, particularly by readers of a lay

paper, was that all these agencies of law enforcement approved of the Mooney conviction on the merits of all the attending and relevant circumstances. How far Mr. Beck was so justified in characterizing the situation is the issue presented by his first letter. In order that the reader may have before him the exact issue, let him compare the Solicitor-General's complete original statement, and my comment thereon. How far the Solicitor-General's characterization was justified I shall then let the record answer.

Mr. Beck's statement in his letter to the New Republic, October 12, 1921, p. 189:

I may frankly say that I do not even know what the Salsedo case is, and as to the Mooney case, I know little more than that it was tried before a jury, and the sufficiency of the verdict was reviewed not merely by the trial judge but also by the highest court of California, and then by the Governor of the state of California in considering the question of executive clemency. Having practised law for thirty-seven years, I have learned how futile it is for a man, through the newspaper reports, to pass judgment upon the result of a trial where the disputed issues were those of fact. A statement of facts may be very convincing in print, but one glance at the man who makes the statement gives you an immediate and generally a very accurate impression whether he is telling the truth or not. Not having had the advantage of attending the Mooney trial, or listening to the story of the witnesses and not having the omniscience of the New Republic, I confess my inability to sit in judgment on a result in which twelve jurymen, a trial Judge, a Supreme Court, and a Governor of a State alike concurred.

Mr. Frankfurter's reply to Mr. Beck in the New Republic, October 19, 1921, p. 215:

Clearly Mr. Beck is wholly misinformed as to the salient record facts in the Mooney case, although those facts (insofar as they had at that time developed) were made the basis of a report by the President's Mediation Commission, which it will take Mr. Beck about ten minutes to read. (Official Bulletin, January 28, 1918, pp. 14-15.) Mr. Beck is not asked "to sit in judgment on a result in which twelve jurymen, a trial judge, a Supreme Court, and a Governor of a State alike concurred." So to summarize the situation presented by the Mooney case is flagrantly to pervert the facts. There was no such concurrence; the record is quite otherwise. After conviction by the twelve jurymen, the most damaging testimony against Mooney was completely discredited (a); after this disclosure the trial judge, instead of "concurring in the result," which had been reached by the jury before this disclosure, formally declared that "right and justice demand that a new trial of Mooney should be had," but found himself powerless to grant such a new trial because of a jurisdictional difficulty (b); the Attorney-General of the State, instead of "concurring in the result," basing his action upon the request of the trial judge, petitioned the Supreme Court, to which the case had gone in the meantime, for a return of the case to the trial court for a new trial (c); the Supreme Court, in its turn, by reason of the technical re-

quirement of the California code, found itself without power to consider facts which led the trial judge and the Attorney-General to urge that "right and justice" demanded a new trial, and, therefore, was compelled "to concur in the result" by shutting its legal eyes to the most important fact about the Mooney case, namely the discrediting of the State's chief witness (d); finally, the Governor of the State, instead of "concurring in the result," and allowing Mooney to be hanged, commuted Mooney's sentence solely because of the doubts against the conviction engendered by the new evidence although, with amazing illogic, he saw nothing strange in incarcerating a man for a lifetime despite those doubts. (e)

(a) The controlling factor which has made the Mooney case "an issue of public importance" was the disclosure of uncontested evidence affecting the credibility of Frank C. Oxman, "the chief witness" against Mooney. After Mooney's conviction and after the denial of a new trial, there came to the attention of the trial judge letters written by Oxman before his testimony against Mooney, the plain purport of which was to urge one Rigall to come from his Illinois town and corroborate Oxman. Rigall confessedly had not been within a thousand miles of San Francisco when the events to which he was to testify had occurred. The essence of the controversy turns upon the discrediting of Oxman after the conviction and after the case had left the trial court. Mr. Beck now quotes the testimony of the foreman of the Mooney jury to the effect that the verdict did not rest solely upon the testimony of Oxman, the chief witness of the prosecution. But Mr. Beck fails to state that this was said on the night of the conviction and long before the disclosures about Oxman. This quotation, therefore, does not state that the jury would have convicted if Oxman's credibility and story had been impeached at the trial, as it has been since. Mr. Beck thinks it relevant to quote the foreman of the jury *before* Oxman was discredited, but does not think it relevant to quote the opinion rendered by the trial Judge as to the meaning of Oxman's testimony in the light of the discrediting disclosures. In a letter to the Governor of California, under date of November 18, 1918, Judge Griffin, who presided at Mooney's trial, thus set forth the meaning of the Oxman disclosures:

In the trial of Mooney there were four witnesses, and four only that connected Mooney with the explosion which occurred at Steuart and Market Streets. They were John MacDonald, Frank C. Oxman, Mrs. Edeau and her daughter Sadie. Of these Oxman and MacDonald placed Mooney at the scene of the crime, and the Edeaus testified to his presence at 721 Market Street.

Oxman was by far the most important of these witnesses. His testimony was unshaken on cross-examination, and his appearance bore out his statement that he was a reputable and prosperous cattle-dealer and land-owner from Oregon. There is no question but that he made a profound impression upon the jury and upon all those who listened to him on the witness-stand, and there is not the slightest doubt in my mind that the testimony of Oxman was the turning point in the Mooney case, and that he is the pivot around which all the other evidence in the case revolves. It was because of the extreme importance of this witness and his naïve simplicity on the witness-stand that when the disclosure of the letters he had written to Rigall and his mother, which are before you, was made, I deemed it my duty to address the Attorney-General as I did. . . .

The situation of Mooney is that he stands condemned to death upon evidence, concerning the truth of which, to say the least, there has arisen a very grave doubt. Since his trial facts and circumstances have come to light which seriously reflect upon the credibility of three of the four witnesses who linked him with the crime of Preparedness Day and which shake the very foundation of the case upon which the people rely for his conviction. (Letter of Judge F. A. Griffin to Governor Stephens, dated November 19, 1918.)

(b) Ordinarily no one is better entitled to a judgment as to the course of a trial or the significance of a witness than the judge who presided at the trial. As soon as Oxman's credibility and story on the witness stand were thus impaired, Judge Franklin A. Griffin, wrote to the Attorney-General of California, requesting him to take such action as would secure a retrial of the case:

As you will at once see they [the Oxman letters] bear directly upon the credibility of the witness and go to the very foundation of the truth of the story told by Oxman on the witness stand. Had they been before me at the time of the hearing of the motion for new trial, I would unhesitatingly have granted it. Unfortunately the matter is now out of my hands jurisdictionally, and I am, therefore, addressing you as the representative of the people on the appeal, to urge upon you the necessity of such action on your part as will result in returning the case to this court for retrial. The letters of Oxman undoubtedly require explanation and so far as Mooney is concerned, unquestionably the explanation should be heard by the jury which passed upon the question of his guilt or innocence. I fully appreciate the unusual character of such a request, and I know of no precedent therefor. In the circumstances of this case, I believe that all of us who were participants in the trial concur that right and justice demand that a new trial of Mooney should be had in order that no possible mistake shall be made in a case where human life is at stake. (Quoted in Report of President's Commission, Official Bulletin, January 28, 1918, p. 15.)

(c) Acting upon this request of Judge Griffin, the Attorney-General, on July 30, 1917, applied to the California Supreme Court, to which the appeal had gone, requesting that the judgment "heretofore entered" by the trial court, "be reversed and the case remanded for a new trial." The facts upon which the Attorney-General acted are thus stated in the San Francisco Chronicle for July 31, 1917:

Webb acted on the request of Superior Judge Franklin A. Griffin, who sentenced Mooney to be hanged.

Judge Griffin demanded a confession of error and a new trial for Mooney after the condemned man's attorneys produced letters in which Oxman, the principal witness for the state, apparently attempted to induce F. E. Rigall to come from Grayville, Illinois, to San Francisco to testify against Mooney.

Requesting a new trial, Webb said: 'It is as important to the people as to the defendant that such an opportunity be afforded.'

The Attorney-General's stipulation points out that Oxman testified at the trial of Mooney that he saw both the Mooneys at Steuart and Market streets the day of the explosion; that Oxman's testimony was pertinent in the case of Mrs. Mooney; that it could have been introduced; that it was not introduced, and that Mrs. Mooney was acquitted.

'In view of these facts and of these statements and requests made by the Judge who tried this case,' said Webb's formal consent, 'it would seem proper to act in accordance with his suggestion.'

The Supreme Court of California thus summarized the legal theory upon which the Attorney General acted:

The sole reason for this action on the part of the attorney-general, as is shown by the writing filed herein by him, is that since the motion for new trial was denied, the judgment pronounced, and the appeal taken, certain evidence has been discovered which leads him and the judge of the trial court to believe that, in the interests of justice, a new trial should be had. (*People vs. Mooney*, 176 Cal. 105, 106).

It is pertinent to note that after the report by the President's Mediation Commission, Attorney-General Webb reaffirmed his position, urging a retrial for Mooney. (See *San Francisco Chronicle*, January 28, 1918.)

(d) The Supreme Court, however, found itself without power to consider the facts which led both the trial court and the Attorney-General to urge that "right and justice" demanded a new trial. At the time of writing my first letter, I was away from books and fell into an error, to which Mr. Beck rightly calls attention, in stating that the jurisdiction of the Supreme Court was limited by the California Code, when in fact, the Supreme Court held it was so limited by the Constitution. But for our present purposes the distinction is wholly irrelevant, for I in no wise criticized the court for stating it had no jurisdiction to consider matters not appearing in the record of the trial, but occurring subsequently. The nub of the matter is that Mr. Beck stated that the Supreme Court "concurred" in the result of the Mooney case, whereas I stated and repeat that the Supreme Court was compelled "to concur in the result" by excluding from consideration the fact which led both the trial judge and the Attorney-General to demand a new trial for him, namely, the subsequent discrediting of the prosecution's chief witness. The Supreme Court itself was very careful not to express an opinion as to the significance of the disclosures affecting Oxman:

We have not considered the reasons stated by the Attorney-General for his conclusion that a new trial should be had, and are not to be understood as expressing any opinion as to their sufficiency. That, as we have endeavored to show, is a matter not within our province. (*People vs. Mooney*, 176 Cal. 105, 109.)

(e) Undeniably the Governor of California did com-

mute the death sentence of Mooney. Let the Governor himself state the grounds for his action:

I have carefully reviewed all the available evidence bearing on the case. There are certain features connected with it which convince me that the extreme sentence should not be executed. Therefore, and because of the earnest request of the President for commutation and conscious of the duty I owe as Governor of this State to all its people, I have decided to commute Mooney's sentence to life imprisonment. In doing so I accept full responsibility for the wisdom and justification of the action.

The record of the trial in the Superior Court was reviewed by the Supreme Court of our State, and it found no reason for upsetting the judgment of the lower court.

However, there has remained for me to consider in addition, certain developments following the conviction that could not be considered by the Supreme Court. It is because of this new evidence that I find justification for commutation of sentence. In arriving at this conclusion, I have exercised that caution which must be observed in weighing evidence presented outside of established legal procedure. (*San Francisco Chronicle*, November 29, 1918).

This being the record, I leave it to the judgment of lawyers and the public generally, whether the Mooney situation is fairly and accurately to be characterized, and above all, by the Solicitor-General of the United States, as "a result in which twelve jurymen, a trial judge, a Supreme Court, and a Governor of a State alike concurred."

II. The fairness and accuracy of the statement now made by the Solicitor-General as to "the facts" of the situation presented by the Mooney case, after the Solicitor-General had made "an examination of the record."

This issue is easily disposed of. The material for judgment is before the reader. It calls for a close comparison between "the facts" as the Solicitor-General presents them and the record of the documents here set forth.

I am convinced that any fair-minded reader who thus compares "the facts" as set out by Mr. Beck with the full record, is bound to reach the conclusion, however reluctantly, that the document to which the name of the Solicitor-General is signed, is an incredible combination of suppression, distortion, and reckless quotation. Do not let me be misunderstood. I do not say, nor can I believe, that the Solicitor-General suppressed, distorted, and recklessly quoted. The mystery is to be explained by the probability that Mr. Beck asked someone in his office to brief the case, and this amazing farrago was served up for Mr. Beck's signature. I shall briefly particularize:

(a) *Suppression.*

(1) Mr. Beck's letter quotes what the foreman of the jury said at the night of the verdict *before* Oxman was discredited, but he fails to state what the trial judge wrote, as quoted above, to the Attorney-General of the state *after* the disclosures, on the strength of which he requested the case to be sent back for retrial.

(2) Mr. Beck's letter fails to mention the application by the Attorney-General of the state to the Supreme Court for reversal of the judgment and the remanding of the case for a new trial because of the disclosures following the

trial, it being according to Attorney-General Webb "as important to the people as to the defendant that such an opportunity be afforded."

(3) Mr. Beck's letter fails to refer to the letter of Judge Griffin under date of November 19, 1918, which was before the Governor when he commuted Mooney's sentence on November 28, 1918, in which the trial judge expressed himself, *inter alia*, as follows:

It was my judgment and opinion that Mooney should receive a new trial upon the Oxman letters alone. In that judgment and opinion I was not alone, for upon examination of the record the attorney general concurred therein and stipulated in open court that the case should be reversed. The Supreme Court of the state held, however, that it was without power to act upon such a stipulation in a criminal case.

Since the Oxman revelation many other circumstances, these few of which I have vainly attempted to skeletonize, have arisen, which have strengthened and made more firm my belief that to carry into execution the judgment now against Mooney would be a travesty upon justice and a blot upon the administration of justice which this state cannot afford to bear. . . .

I have not touched upon the many circumstances which today are matters of common knowledge and public notoriety, and which add enormously to the total of doubt and uncertainty now surrounding the result of Mooney's trial, but have merely dwelt upon these indisputable outstanding facts, themselves now matters of public record, and I can only say, as I said to General Webb. . . .

Right and justice demand a new trial for Thomas J. Mooney, in order that these facts, so material and of such importance to the issue of his guilt or innocence, and unavailable to him at the time of his trial, may be presented to a jury for consideration and determination.

#### (b) *Distortion.*

The quotation which Mr. Beck makes of the Governor's reason for commuting Mooney's sentence, the reader may compare with the full text out of which this portion was lifted.

From Mr. Beck's letter: quoting Governor Stephens' statement:

I have carefully reviewed all the available evidence bearing on the case. *There are certain features connected with it which convince me that the extreme sentence should not be executed.* Therefore, and because of the earnest request of the President for commutation, and conscious of the duty I owe as Governor of this state to all its people, I have decided to commute Mooney's sentence to life imprisonment. In doing so, I accept full responsibility for the wisdom and justification of the action.

The record of the trial in the Supreme Court was reviewed by the Supreme Court of our State, and it found no reason for

. . . the Governor himself says that he commuted the sentence "because of the earnest request of the President for commutation."

upsetting the judgment of the lower court.

However, there has remained for me to consider in addition certain developments following the conviction that could not be considered by the Supreme Court. *It is because of this new evidence that I find justification for commutation of sentence.* In arriving at this conclusion I have exercised that caution which must be observed in weighing evidence presented outside of established legal procedure.

By commutation to life imprisonment, Mooney's case will be in the same status as that of Warren K. Billings, who was convicted of the same crime and received a sentence to life imprisonment. (Italics mine.) San Francisco Chronicle, November 29, 1918.

He was further actuated by the fact, as stated by him, that "by commutation to life imprisonment Mooney's case will be in the same status as that of Warren K. Billings, who was convicted of the same crime and received a sentence to life imprisonment."

#### (c) *Reckless Quotation.*

Mr. Beck seeks to discredit those who are interested in the Mooney case, not for Mooney's sake, but for the law's sake. The obvious device, of course, is to tar them with the Russian stick. I shall deal in the concluding point with his treatment of the report of the President's Mediation Commission; but the motif which plays about Mr. Beck's letter goes back to a statement which it attributes to me. According to Mr. Beck's letter, I gave a "statement to the press which contained the destructive admission that 'a desire to appease the Liberal element in Russia was paramount in the minds of the Commission.'" Even Mr. Beck "would, under ordinary circumstances, be loath to believe" that I "could have been guilty of the incredible ineptitude" of this admission. Now he does not find it necessary even to verify an alleged newspaper statement which ordinarily he would regard as "incredible." The fact is that no such statement was ever made by me. Mr. Beck puts into my mouth, as an admission, what District Attorney Fickert uttered against the President's Mediation Commission, as an accusation. Let me again put side by side a statement which Mr. Beck's letter attributes to me, and a statement by District Attorney Fickert:

From Mr. Beck's Letter: From District Attorney Fickert's Reply to the Findings of the Federal Mediation Commission on the Mooney case:

When the Commission's report was published, Mr. Frankfurter gave the statement to the press, which contained the destructive admission that "a desire to appease the Liberal element in Russia was paramount in the minds of the Commission."

. . . it is suggested in their [the Commission's] report that a desire to appease the Liberal element in Russia was paramount in the minds of the Commissioners. (C. M. Fickert's Reply, April 9, 1918)

An argumentative accusation in a partisan pamphlet by District Attorney Fickert is transmuted by the Solicitor-General into a "naïve admission" by me.

III. The propriety of President Wilson's action in charging the President's Mediation Commission, in September, 1917, with the duty of inquiring into the circumstances attending the Mooney case; the propriety of the Commission's action in obeying the President's instructions; and the fairness of the methods of the inquiry and the report by the Commission upon the situation.

Mr. Beck challenges not merely the methods of the inquiry of the President's Mediation Commission into the Mooney case and the basis of its report. On constitutional grounds he challenges the propriety of the President's inquiry into the case. What are the facts? Time dims memory, but it ought not to be difficult to bring the reader's mind vividly back to the spring and summer of 1917. Certainly this was one of the crucial periods of the war. Certainly the maintenance of an effective morale was one of its dominant problems. Certainly one of the profoundest interests of Allied statesmanship, and particularly of this country, was to maintain the fighting fervor of the Russians. Senator Root, with the acclaim of the whole country, was sent to Russia for that purpose. To a less degree disquietude was making itself felt among the peoples of other Allied countries. With public opinion in this sensitive state, the Mooney case made its public appearance. Manifestations against what was deemed to be an injustice to a "radical" because of his "radical" views, developed in the spring and summer of 1917 both in Russia and in Italy. That the basis of the feeling aroused abroad may have been unjustified by the facts is wholly irrelevant, in considering the effect of that feeling upon the fighting morale of Allied peoples. So strong was this feeling abroad and so threatening in its influence, that news of the case first reached Washington through dispatches from abroad as to these manifestations. It is essential to keep in mind that we are dealing with war feelings at a crucial period of the Great War. Mr. Beck talks much about Lenin and Trotsky. He is silent about Prince Lvov and Kerensky. They were our zealous allies; and it was during *their* régime—long before the Bolsheviks came to power—that the Mooney case began to affect "the liberal sentiment of Russia." That was "the liberal sentiment" with which those in charge of the conduct of the war was concerned.\*

About this time the President was dispatching to the West, a Commission, headed by the Secretary of Labor, to inquire into and adjust serious industrial difficulties affecting war production west of the Mississippi. So profoundly had the President been impressed with the havoc that the Mooney case was raising abroad, that he charged the Commission, as one of its tasks, with the duty of inquiring into the circumstances attending the Mooney case. In other words, he sought dependable knowledge in order to deal with a matter which, whether one likes it or not, *did* affect our foreign relations. But just because the President was not unmindful of the fact which every tyro knows, namely, that the final disposition of Mooney's case was a matter for state action, and was anxious to respect to

the utmost the susceptibility of state feeling and at the same time to discharge his constitutional duty in the executive conduct of foreign relations, he instructed his Commission to inquire into the situation "informally and without publicity." With this short statement of the facts leading up to the appointment of the Commission let us consider the issues that Mr. Beck raises in regard to the appointment of the Commission and its work.

1. Mr. Beck asks what right I had "to sit in judgment upon the judiciary of California?" This question is a variant of the classic inquiry, "Have you stopped beating your wife yet?" Neither the President's Commission, nor I, as its counsel, ever "sat in judgment" upon the judiciary of California. Mr. Beck cannot find any expression or intimation of criticism by the Commission or by me upon the judiciary of California. The report and the recommendations of the Commission recognized the "jurisdictional limitations" imposed upon the Supreme Court of California, and therefore pointed out the need for executive action with the co-operation of the prosecuting attorney, in securing a new trial for the determination of guilt or innocence free from discredited testimony. But if Mr. Beck means to ask by what right the President's Mediation Commission inquired into the circumstances of the Mooney case, the short answer is by virtue of the duty imposed upon it by the President of the United States. If it be the contention of the Solicitor-General that when the President of the United States in time of war, in the execution of his responsibility for the conduct of foreign relations, charges American officials with the task of inquiry into the circumstances of a case, local in its nature, but in its repercussions affecting the foreign relations of this country, it is the duty of such officials to dispute the constitutional power of the President and to read him a lecture on the dual nature of our government, I respectfully dissent from the Solicitor-General. My conception of duty under these circumstances is to obey the President of the United States.

2. As to the methods of the inquiry pursued by the Commission, and the merits of its report, let Mr. G. S. Arnold's accompanying letter speak. Mr. Arnold is a California lawyer, well and favorably known in San Francisco and in Washington. As a lawyer of ability, of tried public service and disinterestedness, the Commission turned to him to make an investigation and a compilation of the documentary data in preparation of the Commission's visit to San Francisco. Through him, also, interviews were arranged in San Francisco between various California officials and the counsel of the President's Commission. At most of these meetings Mr. Arnold was present. He speaks, therefore, with intimate knowledge of the facts. Little needs to be added to his statement.

(a) The first act of the Commission, after reaching San Francisco, was a long and detailed interview, in Mr. Arnold's office, with District Attorney Fickert and Assistant District Attorney Ferrari as to the scope of the Commission's inquiry, the procedure to be followed, and the persons to be interviewed. The policy of the whole inquiry, the procedure by which it was pursued, and the persons who were seen, all, were in accordance with the program approved by District Attorney Fickert.

(b) Nevertheless Mr. Beck repeats as his own, the charge of Mr. Fickert that "the Commission did not even have the fairness to consult the men whose official acts it was about to discredit." There is no other way to characterize this statement than to say that it is without

\* By the time the President's Commission reported to him the Soviet government had begun its rule. But that was all the more reason for avoiding causes for dissatisfaction among other Allied peoples.

a scintilla of justification. The falsity of the charge was exposed in great detail in a letter of Mr. Arnold, under date of April 15, 1918, to the Governor of California. There has never been, as he points out, a denial by Mr. Fickert or by the District Attorney's office of the true facts set forth by Mr. Arnold. But, to use Leslie Stephen's figure, an error will continue to live long after its brains are knocked out. In addition to the available documentary evidence the following is a list of the important people who were consulted, for the Commission in San Francisco, as especially conversant with the Mooney case: District Attorney Fickert, Assistant District Attorney Ferrari, Maxwell McNutt, counsel for Mooney, (Mooney himself was seen), Attorney-General Webb, United States Attorney Preston, Chief Justice Angellotti and the Associate Justices of the Supreme Court, with whom the case was discussed a whole forenoon, ex-Judge F. W. Henshaw, then a member of the Supreme Court and widely regarded as one of the influential advisors of District Attorney Fickert, with whom I discussed the case at length on several occasions, and Archbishop Hanna.

(c) The suggestion running through Mr. Beck's letter is that the report of the President's Commission involved an attack upon the courts of California. An examination of the report will quickly dissipate this wholly erroneous assumption. The following paragraph in the report, explaining and commending the normal American judicial process in criminal cases, will serve to convey the attitude of the report:

8. The convictions of Billings and Mooney followed trials in accordance with the established course of American procedure. It is familiar to students of jurisprudence that no system of criminal administration in the world hedges such safeguards around an accused as does an American trial. The conviction, in other words, was based on evidence narrowly confined to the specific issues. Furthermore, proof of guilt had to be established beyond a reasonable doubt, and established to the unanimous satisfaction of a jury of 12 persons selected from among the people. Conviction by an American jury is guilt determined by a very democratic institution. There is no question but that the jury acted in good faith upon the evidence as it was submitted. It is because of subsequent developments that doubt is based upon the justice of the convictions. Following the trials of Billings and Mooney there was a change in the evidence which not only resulted in the acquittal of Mrs. Mooney and Weinberg, but also cast doubt upon the prior convictions of Billings and Mooney. (Official Bulletin, January 28, 1918, p. 14.)

Doubt has been cast upon Mooney's conviction by two different sets of circumstances, (1) the so-called Oxman letters, and (2) circumstances which challenge the good faith of the prosecution. Neither the Commission's report, nor I, in my earlier letter to the New Republic, refer to these latter circumstances. The Commission based its report upon "one factor of controlling importance"—the Oxman letters. I have similarly restricted myself.

The Commission planted itself upon the insistence of the trial court that "right and justice demand that a new trial of Mooney should be had." In other words, instead

of attacking the courts of California, we urged respect for the pronouncement of that court of California which knows most about the Mooney case, namely, the trial court.

(d) Mr. Beck seeks to dispose of the pertinence of the Oxman letters upon two grounds. Neither is pertinent.

(1) "Unfortunately for the Commission's findings, Oxman was subsequently tried for subornation of perjury, and acquitted." If by "subsequently" Mr. Beck means subsequently to the report of the Commission's findings, a reading of the Commission's report will here again clear the situation. For the Commission stated:

It is true that Oxman was tried for attempted subornation of perjury, and acquitted, but this is beside the present consideration. The fact is that he did write letters which tend completely to discredit any testimony he might give, and no testimony from Oxman in the light of these letters would receive the credence necessary to lead to conviction. . . . When Oxman was discredited, the verdict against Mooney was discredited. (Official Bulletin, *supra*, p. 15.)

Surely no one knows better than Mr. Beck that testimony which may wholly discredit a witness, may yet, for one reason or another, not lead to his conviction for subornation of perjury. And, therefore, with full knowledge of Oxman's acquittal for subornation of perjury, the trial court and the Attorney-General of California have persistently urged a new trial for Mooney because of the Oxman letters.

(2) "The matter was then taken to the polls," writes Mr. Beck, "on a vote to recall the District Attorney, and the people of San Francisco vindicated him by an overwhelming vote." Does Mr. Beck mean to suggest that the re-election of Mr. Fickert has any bearing upon the significance of the Oxman disclosures? Mr. Fickert was re-elected in 1917, but he was defeated in 1919. Is this subsequent defeat proof that the new evidence in support of Mooney was sustained, or that the charges of misconduct were justified? Of course not. Fickert's defeat proved the *mala fides* of his prosecution of Mooney as little as his prior re-election proved the *bona fides* of Oxman.

(e) Finally, there is a suggestion running through Mr. Beck's letter, that the report of the Commission sought to minimize the horror of the crime with which Mooney was charged, or to exculpate Mooney. The Commission was at least as drastic as Mr. Beck in the characterization of the San Francisco preparedness murders, and Mr. Beck himself admits that the report adequately stated Mooney's past complicities. Does Mr. Beck feel that a report, which in part differs only in rhetoric from his own statement of the facts, and in all other matters wherein it differs from his statement, it so differs by the inclusion of the most important facts which Mr. Beck omits, more particularly, the opinions of the trial judge and the action of the state's Attorney-General, is fairly characterized by the Solicitor-General of the United States as an effort "to stifle the cry for justice of cruelly murdered children?"

And where, in the Commission's report, does Mr. Beck find the slightest word calculated to secure the release of Mooney, or to exculpate him in any way whatever? The

Commission, just as Mr. Beck, disavowed any opinion as to Mooney's guilt or innocence:

It was not deemed the province of your Commission to establish the guilt or innocence of Mooney and his associates. We conceived it to be our duty merely to determine whether a solid basis exists for a feeling that an injustice was done or may have been done in the convictions that were obtained, and that an irreparable injustice would be committed to allow such a conviction to proceed to execution. (Official Bulletin, *supra*, p. 14.)

And the Commission stood upon the recommendation of the trial judge and the action of the state's Attorney-General in making its own recommendation:

Your Commission, therefore respectfully recommends in case the Supreme Court of California should find it necessary (confined as it is by jurisdictional limitations) to sustain the conviction of Mooney on the record of the trial, that the President use his good offices to invoke action by the governor of California and the co-operation of its prosecuting officers to the end that a new trial may be had for Mooney whereby guilt or innocence may be put to the test of unquestionable justice. This result can easily be accomplished by postponing the execution of the sentence of Mooney to await the outcome of a new trial, based upon prosecution under one of the untried indictments against him. (Official Bulletin, *supra*, p. 15)

I disbelieve in doctrines of force, and believe in constitutional methods for securing the needs of a modern industrial democracy, as strongly as does Mr. Beck. But for that very reason I deem the process of law vital in the case even of those who themselves have no faith in it. Mooney, the individual, means as little to me as he does to Mr. Beck. Law means as much to Mr. Beck as it does to me. Mr. Beck will agree that the reign of law in the last analysis depends upon the confidence in law by the great body of people. Logically or not, the Mooney case has long been and remains a disturbing element to faith in the adequacy of our legal procedure to rectify a serious charge of miscarriage of justice. This aspect of the Mooney case is not urged by so-called "radicals." It is urged by all those to whom law, as the very basis of our society, is dear. Typical of this attitude is an expression by the New York Tribune in stronger language than I should employ:

The case of Mooney is important because it involves the honor of our judicial system. Never must there be even plausibility to the radical charge that our courts are respecters of persons and amenable to improper influences. This is true conservatism. Because there is doubt of the integrity of the case against Mooney, the country has intruded on California's business to urge a clearing away of the doubt. (New York Tribune, February 9, 1921.)

Let Mr. Beck dismiss this correspondence from his mind. Let him also dismiss the bogey of Russia as a deterrent to the interest, if not the duty, of a leader of the Bar to ascertain the basis for a widely felt belief of miscarriage of justice in a case of persistent prominence.

If the Mooney case had not a single other protago-

nist, it would be entitled to the opinion of Mr. Beck on the merits of the claim for a new trial. Law is vindicated only by law. Not for Mooney's sake, but for the sake of the majesty of the law, to which even outcasts of society may appeal, I ask the Solicitor-General to make an independent investigation of the facts surrounding the Mooney case and to state publicly whether or not he agrees with the judge who presided at the Mooney trial that "right and justice demand a new trial for Thomas J. Mooney, in order that these facts, so material and of such importance to the issue of his guilt or innocence, and unavailable to him at the time of his trial, may be presented to a jury for consideration and determination."

FELIX FRANKFURTER.

Cambridge, Massachusetts.

### Mr. Arnold Corroborates Mr. Frankfurter

SIR: In Mr. James M. Beck's Reply to Mr. Frankfurter of November 12th, 1921, occur a number of statements, some of which lead to incorrect inferences, and some of which are untrue. Mr. Beck usually gives the authority upon which he makes his statements, and it will be understood that in offering the following corrections I mean no offence toward him.

1. Mr. Beck states: "The Commission [Mediation Commission] did not even have the fairness to consult the men whose official acts it was to discredit." The fact is that at the commencement of its investigation in November, 1917, Mr. Frankfurter, secretary and counsel of the Commission, in behalf of the Commission requested me to arrange a conference for him with the District Attorney, Mr. Charles M. Fickert. This I did. The consultation occurred in my office, 1020 Merchants Exchange Building, San Francisco, between Mr. Frankfurter, for the Commission, and the District Attorney, Charles M. Fickert, and Assistant District Attorney Ferrari. The Mooney case was discussed at great length. How many other interviews Mr. Frankfurter and Mr. Fickert, Mr. Ferrari and other members of the District Attorney's office had I do not know, but at this one I was personally present. Thereafter, also at the request of the Commission, I was present at an interview between the Attorney General of the State, Honorable U. S. Webb, and other members of the Attorney General's office, and Mr. Frankfurter. These facts were published in April, 1919, in San Francisco, and have never been denied by the District Attorney's office. Under these circumstances it is difficult for me to see how Solicitor General Beck can make the statement credited to him, or can quote an earlier statement by the District Attorney stating that there was no consultation with "anyone in authority" in connection with the prosecution. The District Attorney and the Attorney-General were the only people in authority in connection with the prosecution, and with both of them the Commission, through its secretary and counsel, consulted.

2. Mr. Beck says: "Before the District Attorney could make reply, as he sought opportunity to do, the Mediation Commission had left San Francisco. His telegrams to the Mediation Commission asking an opportunity to be heard were left, according to the District Attorney's

statement, unanswered." The facts in this connection are as follows: The District Attorney's office suggested to me (doubtless because I had introduced Mr. Frankfurter to Mr. Fickert), that the District Attorney would like to file a reply to the brief or statement filed by the defense, and asked me to secure ten days' time within which this could be done. I gladly secured the ten days' time requested, and so informed the District Attorney. At the expiration of the ten days I was asked to secure ten days' time more. I then stated that the Commission, being then in the Northwest, would certainly not return to Washington for ten days, but urged the preparation and filing of the brief before the end of the second ten days, which I was assured would be done. On the 19th of December, 1917, after the second ten days had elapsed, the District Attorney's office informed my office that the brief was ready for printing. Many weeks later and two days before the Commission's report was published, Mr. Ferrari telephoned me that considerable data had been collected, but that the brief had not yet been wholly prepared. I urged him to wire the Commission and secure a further extension of time. By that time the Commission's recommendations to the President had been prepared. In view of the foregoing, it can hardly be said that failure of the Commission to consider the reply of the District Attorney was in any way the fault of the Commission or of Mr. Frankfurter.

3. Mr. Beck states: "All this, however, mattered little to Mr. Frankfurter's Mediation Commission. It had gone to California to *save* Mooney even if it were necessary to impeach the fairness of the courts of California and the humanity of its executive." The fact is that the Mediation Commission made no effort to *save* Mooney. It did endeavor to secure a new trial upon one of the other indictments in order that the verdict should be free from the taint of the Oxman testimony. This was exactly the recommendation which was made by the trial judge, Judge Griffin, and by the Attorney-General of the State, Mr. Webb. Unless Mr. Beck is willing to admit that without the testimony of Oxman, Mooney could not have been convicted, and further, that the District Attorney would, in view of the disclosures concerning Oxman, be unwilling to put Oxman upon the stand, he must admit that a new trial would not have had the effect of saving Mooney, but would merely have had the effect of removing from the minds of many other respectable people doubts as to the propriety of allowing Mooney's conviction to stand, similar to the doubts which had arisen in the minds of the trial judge and the Attorney General of the State.

4. Mr. Beck says: "Two men, Billings and Mooney, were indicted" for murder in connection with the bomb outrage. The fact is that *five* persons were indicted for these crimes—Billings, Mooney, Weinberg, Mrs. Mooney and Nolan. This fact is significant for the following reasons: After the conviction of Mooney and before the trial of Weinberg, the exposures concerning the chief witness in the Mooney case, F. C. Oxman, became public. Weinberg was thereafter tried, and Oxman was not called as a witness. Weinberg was acquitted. Mrs. Mooney was thereafter tried, and Oxman was not called as a witness. Mrs. Mooney was acquitted. Nolan, after being held in jail for many months, was released without being tried. So far as Weinberg and Mrs. Mooney are concerned, the testimony against them, with the exception of the Oxman testimony, was no stronger and no weaker than it was against Mooney himself.

5. There is a sustained inference in Mr. Beck's "Reply" that the Mediation Commission endeavored to "sit in judgement" on the courts of California and the judiciary of California. There was no such effort on the part of the Mediation Commission. It found the following situation: Mooney had been convicted and grave question had been raised as to the credibility of one or more of the witnesses against him. So grave was this question that the authorities of the State had proceeded against the witness Oxman for subornation of perjury and perjury. These disclosures came after the verdict and motion for new trial in the case, and after the appeal had been perfected. The trial judge and the Attorney-General of the State endeavored to secure a new trial "in the interests of justice." The Supreme Court held that under the law of the State this could not be done through the medium of the Supreme Court, even with the consent of the Attorney-General representing the State. President Wilson, after learning the facts from the Mediation Commission, recommended to the Governor of the State that Mooney be tried on one of the other indictments pending against him in order that all relevant matters should be before the jury which should convict or acquit the defendant. His warrant for so doing was the fact that propaganda concerning the Mooney case was seriously affecting feeling towards and cooperation with the United States in Russia and was being used to disaffect labor in Italy from the war effort of the Allies. Certainly if ever a case could arise where "the President, being in charge of our foreign relations, may in a proper case interest himself in any proceeding in the State courts which affects such foreign relations" (which Mr. Beck apparently admits to be a proper function of the President), it was this case. To call the President's effort an "employment of his great influence to rescue a convicted murderer" is as unfair as it would be to say that the Attorney-General of the State and the trial judge who tried Mooney and who desired "in the interests of justice" that he be tried again, were endeavoring to save him from the consequences of a crime. None of these men, the President of the United States, the Attorney-General of California or the judge was endeavoring to save Mooney, but they were all endeavoring to prove to the world that questionable or perjured testimony would not be used in the United States, even to convict a radical. None of these high officials could be termed "kindergarten Bolsheviks" or any of the other terms which seem so readily to spring to the mind of Mr. Beck, and his co-apostle of law and order and decent expression, Representative Blanton of Texas, in discussing this case.

These and many other statements of the Solicitor-General are fairly subject to challenge. But the main issue is the same. Mooney lies in prison convicted on testimony which the trial judge, the Attorney-General of the State of California (and, from the fact that he did not use Oxman as a witness again) the very prosecuting official believed to have been proven untrustworthy. Mr. Beck believes that the sanctity of American institutions is best served in this way. Many Americans, as jealous of the honor of American law as the Solicitor-General, believe that it would have been better had Mooney been convicted or acquitted in a new trial at which all the facts concerning Oxman and his testimony could have been disclosed. They believe that the latter course would have given less comfort to Anarchy and Lawlessness.

G. S. ARNOLD.

San Francisco, California.

## CORRESPONDENCE

## The Partitioning of Silesia

SIR: We, the undersigned, solemnly protest against the arrangement for partitioning Silesia approved by the Council of the League of Nations. We recognize, especially in the economic division as now ordered, a departure from justice, a disregard of history, and a defiance of the verdict given by the recent plebiscite. We foresee that such a partition makes it more than ever impossible for Germany, thus still further and so terribly crippled, to meet the Reparation demands upon her. And we believe that such a verdict will intensify afresh the unrest of Europe, the danger of future war, and the disorganization and impoverishment of society, not only on the Continent, but in this country.

LORD PARMOOR  
CHARLES G. AMMON  
(Member of the Executive of the National Labour Party)  
WALTER H. AYLES  
(General Secretary, Bristol I. L. P.)  
W. BANFIELD  
(Civic Councillor, Gen. Sec. of the Operative Bakers, Confectioners, and Kindred Workers; Editor, Journeyman Bakers' Magazine)  
HON. LADY BARLOW  
PROFESSOR RAYMOND BEAZLEY  
CAPTAIN E. N. BENNETT  
PERCIVAL BOWER, J. P.  
(Alderman of Birmingham; President Birmingham Labour Party)  
FRED BRAMLEY  
(Assist. Sec. Trades Union Congress Parliamentary Committee)  
J. BROMLEY  
(General Sec. Associated Society of Locomotive Engineers and Firemen)  
MR. and MRS. C. RODEN BUXTON  
NOEL BUXTON  
DR. FRED CONYBEARE  
LADY COURTNEY  
MISS K. D. COURTNEY  
MRS. HELEN CRAWFORD  
MARGARET LLEWELYN DAVIES  
(General Sec. Women's Cooperative Guild)  
D. J. DOLLAN, C. C.  
J. A. FARRER  
(Chairman Skipton Liberal Association)  
PRINCIPAL A. E. GARVIE  
CAPTAIN E. GILL  
ALEXANDER GOSSIP  
(Gen. Sec. National Amalgamated Furnishing Trades' Association)  
J. W. GRAHAM  
(Principal of Dalton Hall)  
CAPTAIN GRENFELL, R. N.  
MRS. M. A. HAMILTON  
JOHN P. HAY, O.S.T., M.A.  
CARL HEATH  
PROFESSOR C. H. HERFORD  
JOHN HILL  
(Secretary Boiler Makers and Iron and Steel Ship Builders)  
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FRANK HODGES, J. P.  
(Member of the Executive of the National Labour Party; Sec. of the Miners' Federation of Great Britain)  
GEORGE HOGG, J. P.  
(National Executive, Union of Post Office Workers; Vice-Chairman, Edinburgh Trades and Labour Council)  
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J. E. MILLS, M.P.  
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SIR J. EDWARDS MOSS (BART)  
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HON. MRS. PENROSE  
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ALDERMAN F. T. RICHARDSON  
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BEN RILEY  
(Labour Candidate for Dewsbury)  
HON. BERTRAND RUSSELL  
F. J. SHAW  
WILLIAM SHAW  
(Secretary, Glasgow Trades and Labour Council)  
J. F. SIME  
(Secretary Dundee and District Union of Jute and Flax Workers)  
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MRS. ETHEL SNOWDEN  
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(Chairman Birmingham I. L. P.)  
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(Secretary, Scottish Divisional Committee of the I. L. P.)  
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R. H. TAWNEY  
CHARLES TREVELYAN  
BEN TURNER, J.P.  
(Secretary, General Union of Textile Workers)  
R. C. WALLHEAD  
(Chairman Independent Labour Party)  
H. BAILLIE WEAVER  
COLONEL JOSIAH WEDGWOOD, M.P.  
JAMES C. WELSH  
(Vice-President, Lanarkshire Mineworkers' Union)  
LEONARD WOOLF

## Mr. Beard's Communication

SIR: In declining to attempt an answer to the questions which he raised in his communication on the Federal Reserve System and Labor, printed in your issue of November 16th, Professor Beard took a sly advantage of those who might disagree with him. He implied that nobody but an economist would propose an answer; and the habit economists have of slighting (because they cannot weigh) the human factor in such questions often makes their conclusions suspect.

Not being an economist, may I nevertheless suggest that Professor Beard has apparently neglected to find out how far and how rapidly prices actually did decline in the periods of depression following our historic panics? If wholesale bankruptcies and crashing commodity markets are to be regarded as blessings (possibly in heavy disguise) for the man out of a job and with little purchasing power, it is worth while to ascertain how much less fortunate we are today than in those other periods of financial and commercial stress.

I have not the materials for an original investigation, but glancing through Professor J. Laurence Laughlin's book, *Money and Prices*, I find an interesting chart showing the trend of prices in the United States, Germany and Great Britain from 1850 to 1913, a period which embraces all our major panics up to the outbreak of the Great War. Prices for the United States, Professor Laughlin says, are taken from the Falkner table of the Aldrich Report from 1850 to 1892, and since 1892 from "the index numbers of the Bureau of Labor." Reading from the chart (numerals are not given) I find that between 1857 and 1860, a panic period, prices declined from the index figure of 112 to 101—a reduction of ten percent and certainly no great boon to the unemployed workman, if retail prices fell no more rapidly than wholesale quotations.

After the crisis of 1873 prices went down from 127 to 122; in 1874 they were 120; the next year, 118. It was not until 1876, three years after the panic, that they got down to 104. The fall in prices in the year following the severe crisis of 1893 was from 86 to 80. In 1895 prices were down to 76, and in 1896 they stood at 74, a reduction of just fourteen percent from the level of the panic year. In 1907-1908, another familiar panic period, the price line shows a downward jerk from 105 to 100, then an advance to 105 again in 1909, and to 108 in 1910.

All these declines are extremely moderate when compared with the break of forty percent in average prices which has taken place since the summer of 1920, according to the figures of the Bureau of Labor Statistics. Nor is it relevant to object that, despite that great fall, prices are still fifty percent above the pre-war level, whereas the decline in our earlier periods of depression generally brought the level back nearly or quite to the pre-panic figure. The man out of a job in 1896 was able to buy his necessary goods just fourteen percent cheaper than three years before, whereas today, with a much higher nominal and actual wage scale, the unemployed worker can buy forty percent cheaper than he could eighteen months ago (the figures, being based on wholesale prices, are merely relative and typical. The Bureau of Labor Statistics shows a decline of twenty-five percent in retail food prices since August, 1920.)

That prices are being artificially maintained at this time because it is easy to borrow at the Reserve Banks is a proposition which is rather amusingly at variance with the cry throughout the South and West and in automobile manufacturing circles (surely the cry has reached Professor Beard's ears?) that prices have collapsed and times are trying men's souls because it is wellnigh impossible to borrow at the Federal Reserve Banks. The furious attacks by would-be borrowers and their spokesmen, reported at length in the newspapers, adequately balance the "chorus of praise which the Federal Reserve Act has received on every hand," as noted by Professor Beard.

To most people, the Federal Reserve Banks seem to be liquidating their position about as rapidly as could be demanded, and if prices do not continue to decline in equal ratio it is at least a fair presumption that some other factors than Reserve bank credit are keeping them up. The latest report of the System, that for November 10th, shows that within twelve months bills and discounts have been paid off to the extent of \$1,737,000,000, or fifty-six percent; additional gold has been impounded to the extent of \$808,000,000, or forty percent; note circulation has decreased \$1,100,000,000, or thirty-three percent. But member banks' deposits at the central banks have declined only \$131,000,000, or seven percent. In other words, member banks have found it possible to pay off a billion and three-quarters of their obligations to the Federal Reserve merely by turning in the gold which came to them from abroad, and by turning in the Federal Reserve notes which came into their tills in regular course of business, thereby hardly altering their deposits at the central institutions. These deposits serve as the members' own legal reserve against loans which are made to their customers. As long as these reserves are maintained at a high level, by one means or another, member banks' loans to their customers may be correspondingly large. The Reserve Banks can hardly do more than see that loans due them are paid. If payment is effected without sensibly diminishing the lending power of member institutions, one must look elsewhere for the cause.

New York City.

S. PALMER HARMAN.

## Political Prisoners

SIR: Doubtless the full machinery of the War Department will soon be set in motion to convict you of the error committed in your issue of December 28th. Brent Dow Allinson writes you a vivid picture of life in the Federal civil prison at Leavenworth, Kansas, and on the cover you give his story the title "Fort Leavenworth." There is a prison at Fort Leavenworth, but it is a disciplinary barracks, or military prison, to which men are sent who commit offences while in the army. The prison at Leavenworth is under the Department of Justice and receives men who violate federal civil laws. The error is one in name only; some of the stupidities described by Mr. Allinson may be absent from Fort Leavenworth, but as one who has investigated this prison I should like to testify that there are others to take their places.

It would be a good thing if more of our political prisoners would follow Mr. Allinson's example and tell what they know about prison life. One day George Bernard Shaw glanced about him in England and saw a lot of people entering prisons; they were political offenders. "This," said Mr. Shaw, "is fine. Our prison system," he declared, "is horribly wicked. It leaves every man who touches it worse than it found him. But now it is becoming comparatively easy to convince people, because it seems to me that in a very short time every honest man in the country will have done six months and got to know something about it." Now that Debs and twenty-odd others have been added to those freed, we in this country ought to get a little more enlightenment, too.

But there are still a hundred or so in. How many people know that a staid committee of the American Prison Association is on record as saying that prison is no place for the political offender? The American Prison Association is composed largely of wardens, heads of reformatories and others whose business it is to know something about keeping criminals locked up. More than two years ago this committee wrote that political offenders "may be wholly without criminal bent and intent." The "grim steel-barred cell was not devised for their safe-keeping," it said. "The rigors to which he is subjected may break the body of a political offender, but is it recorded that his spirit has been tamed, that he has recanted because of the

reformatory measures employed to teach him other concepts of the state and men's relation to it." Who has put the case better?

WINTHROP D. LANE.

New York City.

## Two Letters on "The Sin of Birth Control"

SIR: Will you permit me to give expression to the painful astonishment that I experienced in reading your editorial (December 28th) *The Sin of Birth Control*? In that production you opposed a moral doctrine held tenaciously by the most numerous body of Christians in the world, and you were replying to a solemn enunciation of that doctrine by the head of more than a million and a half American believers. Yet neither the matter nor the spirit of your argument indicated anything like adequate appreciation of these facts.

1. You promised to "examine the Archbishop's premise," that the law of nature and of nature's God forbids birth control. What is the extent of your examination? Merely the dogmatic (if not "authoritarian") assertion that "laws of nature are the last resort of authoritarianism," to accept which is "socially insane." I submit that this is no "examination" at all, that it is invective rather than argument, and that it is unworthy both of the subject and of the New Republic.

2. The editorial commits the gratuitous injustice of ascribing the Catholic discipline against birth control to the desire for an "automatically increasing church membership." If I were to stigmatize this as a coarse insult, your Catholic readers would not think me too severe. Who gave the writer of the editorial this "inside knowledge" of the motives which determine the principles and policy of the Catholic Church? I have probably read and written more about the Church's position on birth control than any other Catholic in the United States; yet I have never found even in the most "esoteric" Latin discussion of the subject a hint or suggestion that the Church authorities are actuated by the utterly base motive attributed to them by the offending editorial.

3. The assertion that "the Catholic Church cannot link its fate with the perpetuation of morons," is mere flippancy. It contributes neither information nor anything else that is helpful. It suggests a simplicity in the situation which every competent student knows is non-existent. It is the crowning ineptitude of an editorial which thousands of your readers regard, I believe, as illustrating a level of polemics that they do not expect to encounter in the New Republic.

JOHN A. RYAN.

Washington.

SIR: The article in your issue of December 28th on the matter of Archbishop Hayes and Birth Control is remarkable, and deserves the highest commendation. In so far as I know, it is the first time a frank, fearless discussion of Roman Catholicism has appeared in an American publication. The significance of your article is not so much that it takes issue with Archbishop Hayes on the specific question of birth control; the important thing is the fact that, at last, an American publication has dared to discuss, openly and emphatically, a subject that has remained, up to now, sacrosanct in the editorial rooms of this country. A large and ever increasing number of persons have appreciated with dismay, anxiety and indignation the extraordinary amount of influence exerted by the Roman Church upon the press of this country. It has been perfectly obvious to them that a discussion, no matter how unimpassioned, of this subject was practically debarred from our American publications. It is, of course, monstrous that such a state of affairs should exist; but the thing is there. One cannot help suspecting that the Roman Catholic organization has imposed a surreptitious censorship upon our American press; although when one attempts to call public attention to hints and rumors that are anybody's secret, one is met with suspicion and rebuff.

The writer of this letter, in company with innumerable others, is not concerned with the theological aspects of Romanism; the thing that matters is the political and sociological aspects; and in so far as these aspects threaten to interfere with and obstruct the fundamental principles of this republic and human progress, they must be subject to open inspection and discussion.

New York City.

CHARLES L. BUCHANAN.

## The Color Organ and the Theatre

IT is a relief to find that Mr. Wilfred's color organ, now at the Neighborhood Playhouse and so much talked and written about, has no connection with music. From Scriabine back to the seventeenth century and down to last winter this attempt to find in color some equivalent for music has persisted. It rests on the feeling, common enough, that there must be some color scale that corresponds to the scale in music. But all experiments from Galton onwards have shown that, however beautiful and engaging this dream of some hidden and inner unity of the senses may be, it has no psychological support; there is no exact relationship for us between sound and light; what sounds white to one ear sounds black to another; and scarcely two persons would agree as to which sound represents the color blue, or green or red. The rumor of the color-music experiments has given to this whole subject of mobile color a fantastic and supersensitive hue from which Mr. Wilfred's invention is free. What he has done is to perfect all the experiments in pure color, such as Rimington's or Mr. Claude Bragdon's, and to achieve an instrument on which light can be manipulated as air is on the pipe organ and can be thrown against a white field with every variety of control in pattern, movement, color, intensity of color, and tempo. He has made an old dream possible in practice, and has brought a new art into being. To say that mobile color is an art means that it rests on its own bottom. "Most men," Plato says, "are blind to the fact that they are ignorant of the essential character of each individual thing." And you miss the point of mobile color if you fail to see its essential character and its difference and freedom from other arts.

But though mobile color has this essential difference and though it is too new an art for any ceremonial or familiar uses and associations, I cannot, seeing it in the theatre, think of it without beginning to wonder what significance it may have there and what implications and subtle evidence it may exhibit. All experience of the theatre divides into two parts, the visual response and the abstract response within the visual. In the life of the eyes all objects seen, the arch of the sky, the expanse of water, the mountain, the running horse, the clouds, possess in themselves an underlying abstraction of design, of pattern, whose presence some men may not detect but whose absence they will resent as lack of proportion, bad color and so on. Primitive art derives its abstract effects from reality, and progresses always toward an embodiment of reality in which the abstract design may be as easily overlooked as it is in nature; and then art moves away from this reality toward design again. But in all stages of art the design is always sought, for it expresses the life of the mind behind the visual life. Mobile color has this design, of course; but it has one advantage at least over other visual arts in that it can express a design that is not static but is perpetually changing, as our invisible consciousness changes. This changing pattern lives for us on that inner sense back of our eyes as music underlies for us the sounds of the world. The visual side of the theatre may derive all sorts of ideas from mobile color. For one among them take, shall we say, the use of a background of mobile color. The scene consists of a spectacle of moving light, of colors and patterns that express some idea. This might supply something of that loosening and freeing of emotion that music has been used

to attain, of that breaking down of our ego's resistance to being carried out of ourselves. Or — for something more interesting technically — what new conceptions might come from the study of the human figure against abstract forms that are freer of the accidental materiality but as living and inexhaustible as the human figure in the nuances of change!

Or for a wider observation take one of Mr. Wilfred's compositions on the color organ, imperfect as they must be as yet, and see what a light it throws on all dramatic theory:

When the curtain rises at the Playhouse there is only a darkened stage to be seen. A complete silence reigns. And then slowly across the blackness of the stage a gradual azure comes. At the top it is a little deeper, perhaps, than lower down, where already a shadow of violet appears; and then in the center a strange figure, white, very pale, azure now against a background which is turning to a pearl color. The figure we have seen before somewhere in the mind, somewhere behind actual things that we have looked at; it is like and unlike a robe, it drifts and is drawn upward slowly. Other figures appear like it, they move toward each other, they change to a vermillion, a flame color, incredibly pure, the life of light itself, without any intervening medium but given straight to us. The vermillion shrinks to a deeper intensity against the azure that has passed now into the space beyond. The figures disappear, drifting upward, the ground fades again, and they return, moving in from the sides, orange with violet and shimmering faint green. They move one above another, we see them rising there like pinnacles; but, at the same time, form shows through form as if some radiant geometry has arisen there. The whole thing seems to have at once the convincingness of physical reality, the abstraction of mathematics, the motion and power of music. All description of the effect must sound vague or merely loose and sensuous; for we have no words beyond a few simple triangles and ovals and squares to express form, and few words that carry any but general images of color. This mobile color is as impossible to describe as music is. And because so much of the theatre is visual, mobile color suggests even more vividly than music does the essential character of the dramatic.

Music has long held its place as the most ideal of the arts. Which is to say that where other arts depend on some phenomenon, as in painting, or some concept, as in poetry, to express the idea, music conveys the idea direct and general; can put, for example, marching itself into our very feet. Mobile color has the same claim to ideality. It too without any intervening medium can convey a pure abstraction not to the ear but to the eye. Out of this abstraction emerges a quality of rhythm, rhythm of pattern, color, movement, tempo and so on. And since these elements draw from all parts of our natures they set up in their action and variety the conflict that is the source of the dramatic. Mobile color, then, illustrates flamingly and unforgettably these abstractions of form, intensity, proportion, tempo, that make up all rhythm. Looking at this moving color you feel a quickening of the whole rhythmic sense of the theatre. You see more than ever how essentially all drama rests on the rhythm of these abstract qualities; they underlie any piece of dramatic art, and if necessary are separable from it; and it, finally, if it has any value, must be reducible to them.

STARK YOUNG.

## Gerhart Hauptmann's Idyll

*Anna*, by Gerhart Hauptmann. Berlin: S. Fischer. 25 marks.

THE most obvious qualities of Gerhart Hauptmann's now considerable work are two: versatility and lyricism. Both are qualities with a large admixture of defect in them; they have a smooth and a seamy side. Versatility is often the cloak of inward uncertainty, lyricism only a name for fluency without control. And in Hauptmann the predominance of the positive over the negative is so wavering and doubtful that our general verdict almost depends on the particular work we have been reading last. He carries versatility to such a point that it is almost impossible to see any single one of his manifestations in relation to a whole. A new book by Hauptmann never seems to be another stone added to a building whose general plan we know; much less does it make the plan more definite. Almost invariably it strikes us as a foundation for a new structure.

Indeed, if we had to find an image to describe Hauptmann's achievement, we should naturally choose a piece of open and beautiful country, on which some imaginative millionaire—another Beckford—had decided to build a town to satisfy his dreams. Roman temples, French châteaux, Indian pagodas, Italian villas, German summer houses, English cottages, all are there. But the money gave out. Some have no roofs, and those with roofs have no furniture, and those with furniture no inhabitants. An atmosphere of death hangs about the abandoned place. But it has a curious, fantastic charm of its own. The failure of so much fine intention is in itself beautiful; and the grass that has overgrown the buildings, the blend of exquisiteness and desolation, give it a baroque enchantment which the most resolute purpose could hardly have created. Our very wonder at what could have been in the artist's mind makes the spell more powerful; but we can hardly be persuaded that it is the artist's own.

Probably the explanation of Hauptmann's failure—and we can call it a failure only by the most positive standards—is that his driving impulse has been almost wholly aesthetic, and his powers too great to submit to it. He has been haunted by beauty, yet he has instinctively shrunk from the patient, minute, almost niggling labor necessary to the achievement of a purely aesthetic end. On the other hand the allurements of beauty have been too persistent and too strong to allow him to be single-hearted in pursuit of truth; whenever he has sat down determined to express the verity of his thought and feeling, the will o' the wisp has danced before his eyes. He could not trust himself, in the last resort he could not believe that beauty would come unsought to inhabit an edifice of truth; he could not make the act of faith that a great writer makes naturally. He must find a nearer way, he must feel as he writes the words: "This is beautiful." The divided soul is apparent in all Hauptmann's work. The solid earth in which his realistic novels begin dissolves into a romantic cloudland; the majority of his plays become those amphibious, ambiguous creatures he calls tragi-comedies; and the rest are fantasies, Lustspiele, Glasshüttenmärchen or fairy-tales.

This is the reason why Hauptmann has many styles but no style. He is the least recognizable of considerable modern writers. It would be impossible for us, when confronted with an unfamiliar piece of his writing, to say positively "That is

Hauptmann." He has no nuance of feeling that is peculiarly his own; he has no individual trick of revealing unsuspected relations in the visible or sensible world. We do not even know what are the elements of experience to which he especially responds, save that he is sensitive to the beauty of great literature, and indeed to beauty in all its more familiar manifestations. But he discovers no new ones. In the deepest sense he is not a creative writer at all: he is too big to be a small one, and too small to be a big one; too much a man to trust his dream, too much a dreamer to face the truth.

In his latest work, *Anna*, which he calls a country love-poem, his essential insecurity is manifest. And yet, though it is another failure to be added to the long list of his failures, it comes perhaps nearer to being a success than anything else he has written. It is a long poem—twenty-four cantos of, on the whole, singularly fine hexameters—telling the story of a young poet's return to the village where he had been once a farm-pupil, and his disastrous love for a girl who has succeeded him in his place on the farm. Hauptmann puts two lines from the third Eclogue on his title page; and his endeavor has obviously been to fit the form and the sentiment of the classical idyll to a story of modern life. The remarkable thing is how nearly he has succeeded. If anyone had told us that we should one day read in a modern hexameter poem of love in a German village, a canto with the old Theocritean refrain to the Muses:

Hebt den Liebesgesang, Ihr Musen, den Liebesgesang  
an . . .

without immediately throwing the book away, it would have seemed incredible. But the incredible thing has happened. We not only did nothing desperate; we positively enjoyed that canto. Even now it seems uncommonly beautiful.

Hauptmann, indeed, uses his powers most admirably in evoking the picture of the German village in the stillness of spring. The directness of the opening, the greeting to Luz Holtzmann when he returns to what had once been his home, carries us completely away. The description of the sunlit farmhouse, of Schwarzkopf the farmer and his pious wife, is so simply and fluently done that we share Luz's emotion. And we are ready, when but the name of *Anna* is mentioned, to believe that it sped like an arrow to his heart.

Luz war wieder allein. Es erschollen die Rufe des Kuckucks

In das lichte Gemach, durch angelweit offene Fenster unaufhörlich, und Luz, der sie zählte, erhielt ein Jahrhundert

Lebenszeit als Geschenk: wahrhaftig, es war nicht zu viel ihm.

Zweige streckte herein ein blühender Obstbaum. Er brauste

ganz von Bienen und andren Insekten und duftete köstlich.

Seltsam, wie es mich traf, was ist mir doch diese Elevin?

dass mir stockte das Herz, als ihr Name, Anna, genannt ward?

Ich war immer ein Narr, und mein Leben lang werd ich ein Narr sein.

In his first two cantos Hauptmann has succeeded in the

most difficult part of his undertaking; he has charmed us into the idyllic frame of mind. We are ready to believe in his simplified and beautiful world, in his Muses, in his god of love with the twanging bow. There is no need for any subtle psychology; it would only break the spell.

It is only fair to say that Hauptmann does not give us any. Anna appears in the sunlight scattering grain to the fowls. *Ut vidi, ut perii*. But Anna is strange. She seems to respond for a moment to Luz's adoration, then she is cold again. One night when he reads his poems in the kitchen, while Aunt Schwarzkopf is knitting and Anna sewing—a charming scene—he risks saying that he must leave the farm on the morrow. Anna colors suddenly. But that is all. She remains aloof, apparently unmoved. Uncle Just, Schwarzkopf's good-for-nothing brother, who has lost yet another job, and now sleeps in the attic with Luz, tells him that Anna has a devil, a secret.

But Luz, shy and mistrustful, can do nothing against his love. He has been warned against Anna by his pious aunt, who tells him that a schoolboy of the neighborhood committed suicide on her account. There is nothing definitely against her, but still. . . . And Anna herself behaves mysteriously to Luz, hinting at her unworthiness. One day the uncle and aunt go to a mission festival in a neighboring town and take Just with them in the hope of introducing him to a new employer. Left alone with Anna, Luz manages to declare his love. They are sitting together in the garden, unperplexed by ecstasy, when Just unexpectedly returns. They have just time to appoint a tryst in the evening. Luz keeps it, in vain. Anna does not come. When he returns to the house, Just tells him that Anna's father and two priests are come back with the uncle and aunt to drive the devil out of her. In despair Luz goes to his room. It is next to Anna's, and he hears the voice of her father strangely coupling her name with Just's and telling her that she must marry one of the priests.

And then—so it seems to us—the poem collapses. Already we have been taken into a misty and uncertain realm by these dark hints concerning Anna. The shadowy connection of her name with Just's is utterly disconcerting. We have lost our way. We are told that the devil is driven out of Anna by one parson, and that she is betrothed to the other. But why, and what really happened, we do not know. These hints of depravity are merely bewildering. That they are only hints we can understand, because if they were facts they would simply refuse to be reconciled with the Anna presented to us in the early part of the poem; but, being only hints, they are not solid enough to support the unexpected dénouement. The story which began in the clearness of bright sunlight ends in a fog.

The poem fails because it violates the canon of simplicity necessary to the idyll. It is the last form in the world in which to attempt to be dark and mysterious. The idyll can be tragic. The second of Theocritus is tragic enough for anybody. But it must be straightforward and precise. "Distinctness," said Keats, "is the poet's luxury," and nowhere is the luxury so much a necessity as in a traditional poetic form. For we come to it with certain expectations; we are ready to meet the poet half-way, prepared to accept a simplification of life. We do not pause to ask why or how Luz fell in love with Anna. But the poet who calls on us to make a contribution to his fiction, as Hauptmann does with a confidence wholly admirable,

must be doubly careful what he does with it. He is bound by the very completeness of our surrender not to presume upon it. There is a tacit agreement between the reader and the poet.

In Anna, Hauptmann breaks it; and the reason, we feel is the same as ever. He cannot trust himself. To have carried on the story quite simply, to have made the tragedy of the poem consist, as it perfectly well might have done, in Anna's being compelled by her father to marry someone else, would have seemed to Hauptmann too simple altogether. One does not live in the twentieth century—with all its repressions, inhibitions, complexes, and the paraphernalia of up-to-date psychology—for nothing. True; but the reply is that if you are bent on being really up-to-date, you do not write idylls. But if you do, (and there is not the faintest reason why you should not, if you are content to appeal to that in human nature which is the same today as it was in the third century B. C.) then you must abide by the rules of the game you have chosen to play. To be à la mode and classical at the same time is impossible, for the classical is precisely that which ignores the fashion. Hauptmann attempts the impossible because, as he has shown before, for example, in *Der Bogen des Odysseus*, it is only the external quality of classicism which attracts him. He is enamored of its beauty, without caring for its truth, and without seeing that the truth is the essential condition of the beauty.

As often before he has been caught in two minds. He has begun by aiming deliberately at writing something beautiful, and been frightened of his own simplicity. His nerve has failed him again; but this time not before he got half-way through a poem which is always interesting, and contains long passages of sustained and simple excellence. We could quote from any one of the first half-dozen cantos. The following lines come from the fourteenth.

Schmetternd geigte der Fink, gewaltig ertönte des Pirols heller Ruf. Es revierte der Wiedehopf laut durch die Dorfmark.

Aufgeplatzt im Rondell war der brünstige Ball der Päonie, dunkelrot. Ihre Stauden umgab das Smaragdgrün der Wiese.

Blendend geilte darin die dotterfarb-fettige Wolfsmilch. Doch Bewegung und Fülle des Klanges und Wettstreit der Farben, all dies Drängen und Weben im Licht: es vermochte ein süßes

Schweigen nicht zu ersticken, das fruchtbar und schläfrig im Licht lag.

Und es schienen wie Seelen des Schweigens die lautlosen Falter, traumhaft taumelnd, wie blind, in beweglichem Schläfe befangen,

Somnambulen des Tages, und magische Stille verbreitend.

That is simple and lovely, and there are dozens of passages of the kind. German hexameters run much better than English. The power of having the verb at the end of the clause is most valuable. But it is not the aptitude of the German language to a classical metre which distinguishes Hauptmann's poem, but a very deep and genuine love of the German country life. It is a pity that he ever took it into his head to be modern.

J. MIDDLETON MURRY.

## Europe Since 1870

*Europe Since 1870*, by Edward Raymond Turner.  
Garden City: Doubleday, Page and Company. \$3.00.

EUROPE Since 1870 offers a very attractive task to a synthetic historian interested in generalizing the experiences of the past in the hope of guiding the conduct of men in the present or the future. Particularly is this true for one privileged to write nearly three years after the signing of the armistice. Only within certain limits has Professor Turner succeeded in rendering the important service to the American public of giving them an intelligent, objective, candid and well measured account of the factors that have metamorphosed the modern political and international order and threatened modern civilization itself.

At the outset it is fair to point out that the work is designed to serve as a commercially successful text-book. As such, it could not well express the candid judgment of the author on many important subjects which have been given a warm emotional content by their absorption into the general complex known as the "war hysteria," unless his opinions may be assumed to be those of the "man of the street." The excellencies of the work are not a few. The typographical technique and the maps are not approached by any other comparable text-book. The author has an attractive style, which is, perhaps, more uniformly lively and pleasing than that which is exhibited in any competing work on modern history. The story is extremely well told. The arrangement and proportion of the book are well conceived and executed. After a few excellent introductory chapters, setting forth the chief trends in nineteenth century history, the main portion of the work treats of the culmination of nationalism with the unification of Germany, the clash of national interests after 1870, the resulting tangle of conflicting alliances, the development of national imperialism, the outbreak of the World War, and its course and aftermath. Decent space is given to social and economic forces and institutions. A healthy liberalism characterizes the treatment of social and intellectual history. Radical social reform programs are fairly analyzed, and critical and scientific thought given proper credit for its great services to modern society. Particularly pleasing is the specific designation of obscurantism and its frank condemnation. All in all, the book is a creditable illustration of the interests represented by the so-called "new history."

Inasmuch as the work is avowedly oriented towards the World War, as "the culmination of modern history," it is only fair to examine the manner in which Professor Turner has handled the causes of the war, as they were rooted in the developments of the last fifty years. When this is made the criterion for judging the book, the conclusion seems inevitable that the author narrowly, but certainly, missed the opportunity to produce a fairly definitive interpretation of contemporary history, which would have possessed very great value for both the college student and the general reader.

The admirable clarity, with which the main trends in national and diplomatic history are analyzed, is to a large degree nullified by a surprising retention of the wartime dualism and diabolism in treating the part played by Germany in the period since 1870. Such an attitude might be excused in manuals prepared for S. A. T. C. classes in 1918, but it cannot be justified in a book prepared

three years after the close of the war, and with the disillusionment of the Peace Conference as the immediate background against which it was written.

The antecedents of the Franco-Prussian War are not fairly handled. One would infer that Bismarck and Prussia were chiefly at fault and were the aggressors, and no intimation is given of the fact that the sentiment of the world was with Prussia in this conflict and approved the terms of the treaty of peace. The statement that "France was to crouch in fear before an all-powerful and arrogant Germany for the next forty years," is but the most absurd drivel in the light of the machinations of Déroulède, Barrès and the League of Patriots, and of the whole propaganda and ceremonial of Revanche. In analyzing the development of the great alliances, which were supposed to provide a European equilibrium through a balance of power, the author either implies or specifically states throughout his discussion that chauvinism, imperialism, navalism and militarism were purely German products, reluctantly acquiesced in by the other powers from a fear of German aggression. The vital fact that they were the outgrowth of an anachronistic and wrong-headed European system, of which Germany was no more than the most conspicuous expression, is thereby fatally obscured. The treatment of French domestic and foreign policy approaches a panegyric. French diplomacy was everywhere benevolent and defensive.

No increase in objectivity is to be observed in the treatment of the immediate antecedents of the World War. Germany was the sole and willing tool of Beelzebub. This attitude is, perhaps, best illustrated in the statement that the chief underlying cause of the war was "the character, the ambitions, the ideals, the purposes of the German people [sic!] which made war seem desirable to them; a good thing not to be shunned." In a long and eloquent passage (pp. 436-39) the German theories of race superiority, *Machtpolitik*, and *Realpolitik* are justly condemned, but nothing appears with respect to Déroulède, Barrès, Lord Roberts, Wyatt, Cramb, Maude, Maxse, Lea, D'Annunzio, Crispi, Pobiedonostsev, Von Plehve, Roosevelt, Mahan, Gardner or Maxim.

While German writers are vigorously denounced for warlike utterances and an advocacy of *Machtpolitik*, Norman Angell's *Great Illusion* is denounced as "a book which was the cause of considerable misleading and delusion." We may express the pious wish that Professor Turner will stumble upon *The Fruits of Victory*. In discussing the failure of the disarmament proposal at the Hague Conferences nothing is said of the obstacle imposed by British refusal to consider naval reductions. In describing the immediate outbreak of hostilities the basic blame is put primarily upon Germany, though the authoritative analysis of the latest documents by Professor Fay puts the responsibility squarely upon Austria and Russia. Professor Turner states in his bibliography that Fay's account is the best and latest interpretation, but about the only indication that he has availed himself of the results of Fay's studies is that we are in part spared the Potsdam Conference. Naturally, the German atrocities are properly mentioned, but there is no statement of similar conduct by Allied countries, particularly Russia.

In dealing with the Peace Conference the author is fair to the League of Nations, but in no way discloses a recognition of the disastrous absurdities of the German indemnity or the inconsistency and violation of the principle of national self-determination in preventing Austria from

**T**HE American reading public is becoming more and more discriminating. Booklovers are learning to reject books of doubtful merit and mediocre quality. We are entering a new era in literature—one that compels the book publisher to be more cautious and selective. A striking example of this new development is the outstanding success of the six books mentioned on this page.

Foremost among the best sellers of the season is **THE MIRRORS OF WASHINGTON** a book that has literally taken the country by storm. Frank, fearless and daring disclosures of an intimate sort concerning our political leaders at Washington, including three of the four delegates to the Armament Conference. Serious, cynical, satirical and humorous in turn, this book has been called the most amazing and revealing volume ever written by an American. Of it the Chicago Daily News says: "A startling and clear picture of Washington's fourteen great political figures—an unusual picture—quite different from anything we have thus far had in American critical writing—should be read by all hands and all parties." There are fourteen portraits and fourteen cartoons by Cesare in the book. (\$2.50.) **THE MIRRORS OF DOWNING STREET** has aroused more comment and bitter discussion, both in England and America than anything ever before written in a biographical way. Here are ruthless portrayals of the secret personalities of many modern British history makers. The author, who conceals his identity under the *nom de plume* of A Gentleman with a Duster, has been compared in brilliancy of style with Lytton Strachey. "A book every intelligent person should read," says the Chicago Evening Post. (12 portraits. \$2.50.) In **THE GLASS OF FASHION** the Gentleman with a Duster puts English high society on the grill, mercilessly showing up the leaders of fashion. His brilliant shafts of wit, satire and ruthless criticism are leveled particularly at Margot Asquith and Colonel Repington, dubbing the former "the grandmother of the flapper" and convicting the latter of flippancy, profligacy and lack of moral responsibility. A book that vividly reveals the sinister influence of society on world politics. (\$2.50.) One of the outstanding novels of the year is **PRIVILEGE** by *Michael Sadleir*. A story that pictures with stark realism the decadence and final disintegration of a fine old aristocratic English family. This book has won the unstinted praise of critics both in England and America. Charles Hanson Towne, Author and Editor, recently said in the New York Herald: "Michael Sadleir has definitely arrived with this big book." (\$2.00.) **ERIK DORN** by *Ben Hecht*, a new writer, has created a tremendous sensation, taking its place immediately among the best sellers. It has recently been published in England where it leaped into instant popularity. A brilliant, daring, audacious novel in which the author displays an uncanny knowledge of sex psychology. "One of the most striking literary achievements of the year," says the New York Times. (\$2.00.) **THE CRUISE OF THE KAWA** by *Walter E. Traprock* is still rocking the country with laughter. A gorgeously humorous burlesque on South Sea exploration. A book that is destined to take a place alongside such classics as "BARON MUNCHHAUSEN," "GULLIVER'S TRAVELS" and "THROUGH THE LOOKING GLASS." "Undeniably a roaringly comic book," F. P. A. in the Conning Tower, New York Tribune. Illustrated from photographs. (\$2.00.)

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joining Germany. Indeed, Keynes's work is dismissed as "a brilliant but specious attack on the economic conditions of the Treaty." We may suggest a cultivation of Mr. Keynes's *After Three Years*. Nor does he protest the treatment of Bulgaria. No student would draw from the chapter the all-important generalization that the Allies met their only crushing defeat at the Paris Conference and in the United States Senate.

One may turn to the last chapter, that on the Russian Revolution, wondering if the current obsessions on that subject will have marred the author's judgment, but he will find little to criticize and much to commend in the brief analysis of that movement. The author's generally dominant liberalism saves him from introducing any significant amount of dualistic eschatology, into this chapter. The Bolsheviks appear as the natural, if temporary, product of Russian social and economic conditions.

In the light of the general excellence of most of the work, it is to be hoped that in a second edition one may discover a rewriting of some twenty or thirty pages, which reflect the excitement and heightened emotions of a period of active warfare and not the constructive moderation and the calm reflection and reconsideration which must come to dominate the post-war period if the "fruits of victory" are to be other than universal misery and preparation for another conflict. It is not any "Pro-German" complex which prompts this hope, but a profound conviction that the persistence of this primitive "scape-goat" psychology in our interpretations of contemporary European history is the most fatal obstacle to any sane appraisal and solution of the world situation today. It may well be that Professor Turner would be the first to admit the justice of the above criticism, and he might well retort that the public must pay the price of expecting to meet "discretion" rather than "candor" in its text-books, as long as it is willing to tolerate a degree of educational degradation, such as is reflected in the appointment of a municipal accountant to pass upon the accuracy and objectivity of the historical text-books used in the metropolis of the world.

HARRY ELMER BARNES.

## England in Spain

*A Picture of Modern Spain*, by J. B. Trend. Boston: Houghton, Mifflin Company. \$5.50.

**I**N a country like Spain, where there are such floods of light, such air, and such miles of rock and a soil that is green, black, red, orange, tawny-colored, and where the people have such warm and glowing and austere possibilities, and the traditions are so grandiose and hard, it is difficult to see how anyone could keep his account of it so undistinguished, dry and loose as Mr. Trend has done. I ask myself how much people like this ever see the point at all in what they meet with and write about. How else, for example, could the style of the authors he discusses, of Galdós, Lope de Vega with his dramatic sense, or Pío Baroja—whose manner in *Las horas solitarias* Mr. Trend seems to imitate at times—with his clear irony and easy point, leave his own style almost untouched? Where were his eyes and ears in Spain that they did not leave more shocks on him? Did he go through it all like a spoon through soup without perceiving the savor thereof, as the Hindoos say?

To make matters worse, Mr. Trend adds to this lack of

any really sensitive approach two traits which, I am afraid, are characteristically English; at any rate they are tedious enough. The first comes from that rag-bag sort of mind, that whimsicality, individuality, freedom if you like, which refuses to follow a system. So that this book, which promises to be a record of modern Spain and which begins stoutly enough with Spain after the war, what they thought of it all, the outlook in Spain, goes on then to a discussion of education, trickles off into a note on Spanish literature, fifty-six pages all this, launches at this point into a hundred pages on the Catalan contribution, the language, the plays, the effect of the discovery of America and so on, and ends finally with Spanish Plays and Incidental Music and a few memories, in the Arthur Symonds mood without the spell. For a picture of modern Spain such an allotment of matter obviously makes chaos. It has not even the truth of proportion. The other tiresome trait is an old friend. It consists at bottom in carrying the island over the world. Mr. Trend too repeatedly finds that "English" quality in Spain, the afternoon by the fire might have been in England, the tea, the armchair; the Spanish point-of-view has a mixture of idealism, humanity and commonsense that is very English; when the Spanish set about certain reforms educational and otherwise they went at it in a quiet way that was very English; and so on; in other words things are better out there than you might think.

All this would make it seem that *A Picture of Modern Spain* is not worth even a review, which is not true at all. For though the book has no distinction, it has a pottering around and about that brings together material that could not be found anywhere else exactly, not in one volume at least. On the economic side it is all weak, negligible. On the political not so much better, nor on the literary. But the opening discussion on the state of mind in Spain will be new to many readers. The notes on shadow-shows, Eighteenth Century Opera, the music of old Spanish plays, the foundations of Spanish theatre music, the cante flamenco, and especially on the Mystery of Elche, are seen without pungency but certainly con amore; and the fascination of this material and its growing vogue abroad make Mr. Trend's an important contribution. But the best things in the book are always the straight quotations from the Spaniards themselves, their remarks on politics, Europe, living; which carry on them that fresh stamp of truth that is one of the delights of travel.

S. Y.

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